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October 1, 2008

223 712



Via HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
OCT - 2 2008
Part of
Public Record

Re: **STB Finance Docket No. 35177, Genesee & Wyoming Inc.—Control Exemption—
The Aliquippa & Ohio River Railroad Co. et al.**

Dear Secretary Quinlan

Enclosed for filing in the above-referenced docket are an original and ten copies of a Petition for Exemption filed by Genesee & Wyoming Inc. under 49 C.F.R. Part 1121 to acquire control of ten railroads collectively referred to as the "Ohio Central Railroads." The ten railroads are identified on page 5 of the Petition for Exemption. A copy of the Petition is also enclosed on a CD.

A check in the amount of \$9400 to cover the filing fee is enclosed. We have also enclosed twenty additional copies of the maps attached to the Petition for Exemption. An unredacted copy of the Stock Purchase Agreement is being contemporaneously filed under separate cover, in conjunction with a Motion for Protective Order.

Please date-stamp the attached extra copy of this letter and the Petition for Exemption and return to my messenger. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David H. Coburn'.

David H. Coburn
Attorney for Genesee & Wyoming Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Finance Docket No. 35177

**GENESEE & WYOMING INC.—
CONTROL EXEMPTION—**

223112

**THE ALIQUIPPA & OHIO RIVER RAILROAD CO.; THE COLUMBUS AND OHIO
RIVER RAIL ROAD COMPANY; THE MAHONING VALLEY RAILWAY COMPANY;
OHIO AND PENNSYLVANIA RAILROAD COMPANY; OHIO CENTRAL RAILROAD,
INC.; THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY; OHIO
SOUTHERN RAILROAD, INC.; YOUNGSTOWN & AUSTINTOWN RAILROAD, INC.;
THE YOUNGSTOWN BELT RAILROAD COMPANY; AND THE WARREN &
TRUMBULL RAILROAD COMPANY**

PETITION FOR EXEMPTION

EXPEDITED ACTION REQUESTED

FEE RECEIVED

OCT - 1 2008

**SURFACE
TRANSPORTATION BOARD**

FILED
OCT - 1 2008
**SURFACE
TRANSPORTATION BOARD**

David H. Coburn
Aric A. Anderson
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
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Attorneys for Genesee & Wyoming Inc.

October 1, 2008

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35177

**GENESEE & WYOMING INC.—
CONTROL EXEMPTION—**

**THE ALIQUIPPA & OHIO RIVER RAILROAD CO.; THE COLUMBUS AND OHIO
RIVER RAIL ROAD COMPANY; THE MAHONING VALLEY RAILWAY COMPANY;
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SOUTHERN RAILROAD, INC.; YOUNGSTOWN & AUSTINTOWN RAILROAD, INC.;
THE YOUNGSTOWN BELT RAILROAD COMPANY; AND THE WARREN &
TRUMBULL RAILROAD COMPANY**



PETITION FOR EXEMPTION

Expedited Action Requested

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1121.1 *et seq*, Genesee & Wyoming Inc. ("GWI"), a noncarrier holding company, petitions for exemption from the prior approval requirements of 49 U.S.C. § 11323 *et seq* in order to permit it to acquire control of Summit View, Inc. ("Summit View"), a noncarrier, and thereby acquire control of ten Class III railroads ("Ohio Central Railroads") controlled by Summit View. GWI will acquire 100% of the stock of Summit View, which owns 100% of the shares of the Ohio Central Railroads, as described in greater detail below.

GWI consummated the deal to acquire Summit View and the ten Class III railroads on October 1, 2008, prior to the Board's issuance of a decision in this matter. Shares of the ten railroads were deposited into appropriate voting trusts in order to avoid being in violation of the requirements on acquiring control of a railroad. The voting trusts are described in more detail below.

I. GWI System

GW I is a noncarrier holding company that directly or indirectly controls one Class II and 28 Class III railroads. GW I controls the Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier operating in New York and Pennsylvania. It controls the following Class III railroads, operating in the indicated states: Arkansas, Louisiana & Mississippi Railroad Company (Arkansas and Louisiana); Chattahoochee Bay Railroad, Inc. (Georgia and Alabama); Chattahoochee Industrial Railroad (Georgia); The Chattooga and Chickamauga Railway Company (Tennessee and Georgia); Columbus and Greenville Railway Company (Mississippi); Commonwealth Railway, Inc. (Virginia); Corpus Christi Terminal Railroad, Inc. (Texas); Dansville and Mount Morris Railroad Company (New York); First Coast Railroad, Inc. (Florida and Georgia); Fordyce & Princeton Railroad Company (Arkansas); Genesee & Wyoming Railroad Company, Inc. (New York); Golden Isles Terminal Railroad, Inc. (Georgia); Illinois & Midland Railroad, Inc. (Illinois); Louisiana & Delta Railroad, Inc. (Louisiana); Luxapalila Valley Railroad, Inc. (Mississippi and Alabama); Maryland Midland Railway, Inc. (Maryland); Portland & Western Railroad, Inc. (Oregon); Rochester & Southern Railroad, Inc. (New York); Salt Lake City Southern Railroad Company (Utah); Savannah Port Terminal Railroad Inc. (Georgia); South Buffalo Railway Company (New York); St. Lawrence & Atlantic Railroad Company (Vermont, New Hampshire, Maine), St. Lawrence & Atlantic Railroad (Quebec), Inc (Vermont); Talleyrand Terminal Railroad, Inc. (Florida); Tazewell & Peoria Railroad, Inc. (Illinois); Utah Railway Company (Colorado, Utah); Willamette and Pacific Railroad, Inc. (Oregon); and York Railway Company¹ (Pennsylvania)

¹ In addition, GWI has control over two limited liability companies, Maryland and Pennsylvania, LLC and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which the York Railway Company operates

In addition, GWI controls additional railroads with two of its wholly owned subsidiaries that are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2). GWI and RP1 control Rail Partners, L.P.,² and eight class III rail carriers formed as limited partnerships.³ GWI and RP2 control Rail Partners, L.P.,⁴ KWT Railway Inc. (a Class III rail carrier), and five Class III rail carriers organized as limited liability companies.⁵

The Board's most recent approval of the common control of the GWI system came when it published the notice of exemption filed in *Genesee & Wyoming Inc.—Control Exemption—Columbus and Greenville Railway Company, The Chattooga and Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc*, STB Finance Docket No. 35139 (served May 15, 2008). That notice of exemption became effective May 29, 2008

On October 1, 2008 in STB Finance Docket No. 35183, GWI filed a Petition for Exemption to acquire indirect control of Georgia Southwestern Railroad, Inc. The Georgia Southwestern Railroad does not connect to the Ohio Central Railroads, and the transaction that is the subject of that simultaneously filed Petition was unrelated to the Ohio Central Railroad transaction. If the Board approves the acquisition of control of the Georgia Southwestern

² Rail Partners, L.P. is a noncarrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the Class III rail carriers that GWI and RP1 and RP2 control together. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

³ These carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership.

⁴ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁵ The carriers are AN Railway, L.L.C.; The Bay Line Railroad, L.L.C.; Meridian & Bigbee Railroad, L.L.C.; Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

Railroad prior to its action on this Petition, then GWI respectfully requests that the Board deem this Petition amended to include Georgia Southwestern Railroad among the railroads controlled by GWI. Further, GWI would have no objection to the consolidation of this Petition with the separate Petition filed for control of the Georgia Southwestern Railroad for purposes of rendering a decision if doing so would expedite the issuance of such decisions

Maps of the GWI system are attached hereto as Exhibit 1.

The full name and address of the petitioner is as follows:

Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830

Questions or correspondence concerning this petition should be sent to the representative of GWI at the following address:

David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-8003

II. The Ohio Central Railroads

Summit View is a noncarrier that controls ten railroad companies referred to herein as the Ohio Central Railroads. Summit View's control of those ten railroads was the subject of a notice of exemption filed with the Board in *Summit View, Inc.-Continuance in Control Exemption-Aliquippa & Ohio River Railroad Co* , STB Finance Docket No. 34261 (served Oct. 30, 2002). All shares in Summit View are owned by Jerry Joe Jacobsen.

The Ohio Central Railroads are all Class III railroads. They are: Aliquippa & Ohio River Railroad Co.; The Columbus & Ohio River Rail Road Company, Mahoning Valley Railway Company; Ohio & Pennsylvania Railroad Company; Ohio Central Railroad, Inc ; Ohio Southern Railroad, Inc.; Pittsburgh & Ohio Central Railroad Company, Warren & Trumbull

Railroad Company: Youngstown & Austintown Railroad, Inc.; and Youngstown Belt Railroad Company. The railroads, several of which connect with one another, operate in Pennsylvania and Ohio. Maps of the Ohio Central Railroads are attached as Exhibit 2.

The Ohio Central Railroads are operated as three systems, each of which constitutes a single system for Board regulatory purposes.⁶ The Southern Line Railroads are: The Columbus & Ohio River Rail Road Company; Ohio Central Railroad, Inc.; and Ohio Southern Railroad, Inc. The Youngstown Division Railroads are: Mahoning Valley Railway Company, Ohio & Pennsylvania Railroad Company; Warren & Trumbull Railroad Company; Youngstown & Austintown Railroad, Inc.; and Youngstown Belt Railroad Company. And the Pittsburgh Division Railroads are: Pittsburgh & Ohio Central Railroad Company and the Aliquippa & Ohio River Railroad Co. The present owner of the railroads treat them as being in these three divisions. None of the railroads compete with another railroad within its own division or either of the other two divisions.⁷

Each division has one central office. The Southern Line Railroads are run from an office in Coshocton, which also acts as headquarters for the entire Ohio Central system. The Youngstown Division Railroads are run from an Youngstown, OH and the Pittsburgh Division Railroads from McKees Rocks, PA. All ten of the railroads share upper management. In addition, the Youngstown Division Railroads are run by one General Manager and Superintendent of Operations, and the Pittsburgh Division Railroads are also run by one General

⁶ See discussion of single system concept at *ISG Cleveland Works Railway Co.—Acquisition and Operation Exemption—Rail Lines of the Cuyahoga Valley Railway Co and River Terminal Railway Co.*, STB Finance Docket No. 34182 (served May 15, 2002)

⁷ All Southern Division carriers connect with each other, as do all Youngstown Division carriers. Although the two Pittsburgh Division carriers do not connect, they are otherwise related, in that Pittsburgh & Ohio Central Railroad Company provides all operations for the Aliquippa & Ohio River Railroad Co.

Manager and Superintendent of Operations. The locomotives of all ten railroads are owned by one affiliated company and identified with a common paint scheme. Each of the three divisions employs car department employees for the railroads within that division.

Significant management, budgeting, capital expenditure and other decisions for all ten railroads are made at the central headquarters in Coshocton. Accounting, clerical, car management, purchasing, human relations, real estate, and related functions are also centralized in Coshocton., as are maintenance of way/signal activities for all ten railroads.

The marketing efforts of all ten railroads are coordinated and directed from the central headquarters in Coshocton. The railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization; and the customers of all railroads call a central location for service.

III. The Stock Purchase Agreement

The transaction is a purchase by GWI of all the stock of Summit View from Jerry Joe Jacobsen pursuant to a Stock Purchase Agreement. A redacted copy of the Stock Purchase Agreement is attached as Exhibit 3, and a complete copy of the Stock Purchase Agreement is being filed under separate cover pursuant to a requested protective order. In acquiring ownership of 100% of the shares of Summit View, GWI will acquire complete control of the ten railroads currently controlled by Summit View.

GWI proposes to acquire control of the ten railroads and operate them as a part of the GWI system. GWI does not anticipate making any material changes in the scope or nature of the railroads' operations, or of the maintenance of their lines. Following approval of the transaction, the senior managers of the Ohio Central railroads will report to a regional manager of GWI, facilitating coordination in the operation and marketing of the services of the Ohio Central railroads. There will be no reduction in service options. In fact, shippers can expect the benefits

that will come from being on the GWI system in the form of access to enhanced financial resources, more robust management support for operations and safety systems, and a broader set of relationships with Class I railroads.

One predicate element of this transaction required an approval of the state of Ohio. Specifically, the Columbus & Ohio River Rail Road Company, one of the railroads being acquired, is party to an operating agreement with the State of Ohio and the Ohio Rail Development Commission ("ORDC"). That agreement requires the consent of the Director of the ORDC before the transfer of a controlling interest in the stock of the Columbus & Ohio River Railroad. That consent was obtained on September 11, 2008.

The transaction was consummated on October 1, 2008. Because the ten Ohio Central Railroads are operated as three separate single systems, the shares of the railroads were placed into three voting trusts to hold the shares. Each trustee will hold the shares for all railroads within one of each of the three single systems.⁸ Copies of the voting trusts will be supplied to the Board under separate cover.

IV. Basis for Exemption

Because it already controls at least one railroad, GWI must obtain Board approval before acquiring control of another railroad. 49 U.S.C. § 11323. However, the Board is required to exempt the acquisition of control from regulation and the prior-approval requirement where the Board finds that regulation

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either--

⁸ Shares in railroads operated as a single system may be held by a single trustee. *Cf. Reliance Group Holdings, Inc.*, 366 I.C.C. 446, 452 n.7 (1982)

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

49 U.S.C. § 10502(a).

The Board has previously issued a class exemption that exempts an entity from the requirement to obtain prior approval where it is obtaining control of a non-connecting rail carrier and “(i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.” 49 C.F.R. § 1180.2(d)(2). While carriers within the Ohio Central Railroads connect with each other, they do not connect with any existing GWI carriers. GWI thus believes that the proposed transaction is subject to the 49 C.F.R. § 1180.2(d)(2) class exemption for control of non-connecting carriers. GWI recognizes, however, that the law is not fully clear on the question of whether the class exemption is available in a setting where a group of railroads that connect with one another is being acquired. *Compare Fortress Investment Group LLC, et al -- Control Exemption -- RailAmerica, Inc , et al , STB Finance Docket No. 34972 (STB corrected notice served December 22, 2006) (class exemption process employed) with Genesee & Wyoming Inc -- Control Exemption -- Arkansas, Louisiana & Mississippi Railroad Company and Fordyce & Princeton Railroad Company, STB Finance Docket No 34453 (STB served February 5, 2004) at 2 (noting that class exemption is not available where acquired lines connect with one another)* Out of an abundance of caution, GWI is filing this petition for exemption to obtain control of Ohio Central Railroads and believes the Board should exercise its power under 49 U.S.C. § 10502 to exempt GWI from the regulatory requirements.

A. The Board's prior approval is not required to carry out the national transportation policy

Detailed scrutiny of the transaction, through an application for review and approval under Section 10902, is not necessary to carry out the rail transportation policy ("RTP") established in 49 U.S.C. § 10101. To the contrary, exemption from prior approval will promote the policies in the RTP.

Use of an exemption process rather than an application process will advance several aspects of the RTP. Such a procedure will "minimize the need for Federal regulatory control over the rail transportation system" (49 U.S.C. § 10101(2)), "reduce regulatory barriers to entry into and exit from the industry" (49 U.S.C. § 10101(7)), and "provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part" (49 U.S.C. § 10101(15)). On the other hand, requiring GWI to obtain prior approval by means of an application will frustrate that policy of regulatory minimization. *Genesee & Wyoming Inc.—Continuance in Control Exemption—Chattahoochee Bay Railroad, Inc.*, STB Finance Docket No. 34913 (served Nov. 9, 2006). It will also place unwarranted regulatory burdens in the way of the owner of Summit View with respect to his exit from control of the Ohio Central railroads. *StatesRail, Inc.—Acquisition of Control Exemption—Kyle Railways Inc.*, STB Finance Docket No. 33340 (served Apr. 17, 1997).

The decision to allow the ten railroads to join into the larger GWI system, and attain the benefits of its experience, logistics, capital and administrative support, will also substantively advance that national RTP. Such a transaction will "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers" (49 U.S.C. § 10101(4)), "foster sound economic conditions in transportation" (49 U.S.C. § 10101(5)), and "encourage honest and efficient management of railroads" (49 U.S.C. § 10101(9)). In particular,

incorporating the ten Ohio Central Railroads into the GWI railroad family will enhance the efficient management of those railroads, to the benefit of the shippers that use the Ohio Central Railroads. *Genesee & Wyoming Inc.—Continuance in Control Exemption—Chattahoochee Bay Railroad, Inc* , STB Finance Docket No. 34913 (served Nov. 9, 2006). It will also benefit GWI by advancing the policy of “promot[ing] a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues” (49 U.S.C. § 10101(3)).

Other aspects of the RTP will not be adversely affected.

B. The Board's prior approval is not required to protect shippers from the abuse of market power

The proposed transaction does not involve a decrease in rail operations or a lessening of competition. As such, the proposed transaction raises no specter of market power, and the Board should exempt GWI from the requirement of prior Board approval.

The railroads to be acquired by GWI do not interconnect with the GWI railroads. They operate in limited areas of Pennsylvania and Ohio not presently directly served by any GWI-controlled railroads. The proposed transaction will simply add them into, and thus enlarge, the GWI System, without any detrimental effect on the service being provided or the level of competition available to the shippers. *Genesee & Wyoming Inc —Continuance in Control Exemption—Tazewell & Peoria Railroad, Inc* , STB Finance Docket No. 34545 (served Oct. 1, 2004).

At the same time, shippers can expect the benefits that will come from being on the GWI system in the form of stronger financial resources, enhanced management support for operations and safety systems, and broader relationships with Class I railroads.

C. The Board's prior approval is not required because the transaction is of limited scope

Because regulation is not necessary to protect shippers from the abuse of market power, the Board need not address the factor of whether the transaction is of limited scope. *Fort Worth & Western Railroad Co., Inc.—Lease Exemption—St. Louis Southwestern Railway Co.*, STB Finance Docket No. 32955 (served Sept. 5, 1996). Nevertheless, the planned transaction is also of limited scope.

Although there are several individual carriers at issue in the transaction, they operate in somewhat different geographic markets, and do not compete with each other. See *RailAmerica, Inc.—Control Exemption—RailTex, Inc.*, 4 S.T.B. 479, STB Finance Docket No. 33813, at n. 10 (served Jan. 10, 2000). Also, some of the railroads that are being acquired operate on very short stretches of line. Youngstown & Austintown Railroad, Inc. operates on approximately five miles of track, while the following railroads operate on less than 50 miles of track: Aliquippa & Ohio River Railroad Co. and Youngstown Belt Railroad Company. None of the Ohio Central railroads operates more than 170 miles of track. Further, this is simply a change in control proceeding and there will be no significant operational changes that will flow from it. As noted above, GWI believes that this transaction falls within the class exemption available for the acquisition of control of non-connecting railroads and for that additional reason is of limited scope.

V. Employee Protective Conditions

Because the proposed control transaction includes one Class II rail carrier, the transaction will be subject to the labor protective conditions set forth in 49 U.S.C. § 11326(b). The level of labor protective conditions is as spelled out in that statute.

VI. Environmental and Historical reports

No environmental analysis under the National Environmental Policy Act need be prepared because the proposed transaction will not involve significant changes in carrier operations, as defined in 49 C.F.R. § 1105.7(e)(4, 5). 49 C.F.R. § 1105.6(c)(2). Likewise, an historic report under the National Historic Preservation Act is not required for two reasons. First, there are no plans to alter properties subject to Board jurisdiction that are 50 years old or older. 49 C.F.R. § 1105.8(b)(1) Second, this control transaction will not substantially change the level of maintenance of railroad property. 49 C.F.R. § 1105.8(b)(3)

VII. Voting Trusts

As stated above, GWI is closing the purchase transaction that is the subject of this Petition of Exemption prior to the Board's issuance of a decision in this proceeding. That being the case, Petitioner has placed the shares of the ten railroads placed into appropriate separate, independent, irrevocable voting trusts pursuant to the STB's rules at 49 CFR Part 1013 to prevent any unauthorized control until such time as the Board issues a decision exempting GWI's control of the Ohio Central Railroads. A copy of the form of Voting Trust Agreement used by Petitioner is attached hereto as Exhibit 4, and copies of the executed voting trust agreements will be filed with the STB as per the Board's rules

VIII. Request for Expedited Action

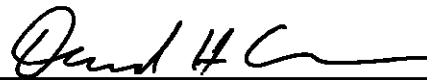
As noted, the transaction was consummated and shares placed in voting trusts on October 1, 2008. GWI requests expedited treatment so that the shares can be controlled by GWI, to achieve the benefits described previously in this Petition. Expedition is warranted so that the benefits of the transaction can be achieved more quickly. Further, since GWI believes that this Transaction could have been handled under the simplified class exemption process, GWI urges

the Board to act with expedition on this Petition so that the voting trusts can be dissolved and control achieved as quickly as possible.

IX. Conclusion

For the foregoing reasons, GWI requests that the Board exempt its acquisition of Summit View and its proposed control of the ten Ohio Central railroads from regulation under 49 U.S.C. § 10502.

Respectfully submitted,



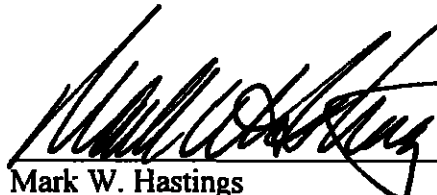
David H. Coburn
Aric A. Anderson
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000
Attorneys for Genesee & Wyoming Inc.

October 1, 2008

VERIFICATION

State of Connecticut)
) ss
County of Fairfield)

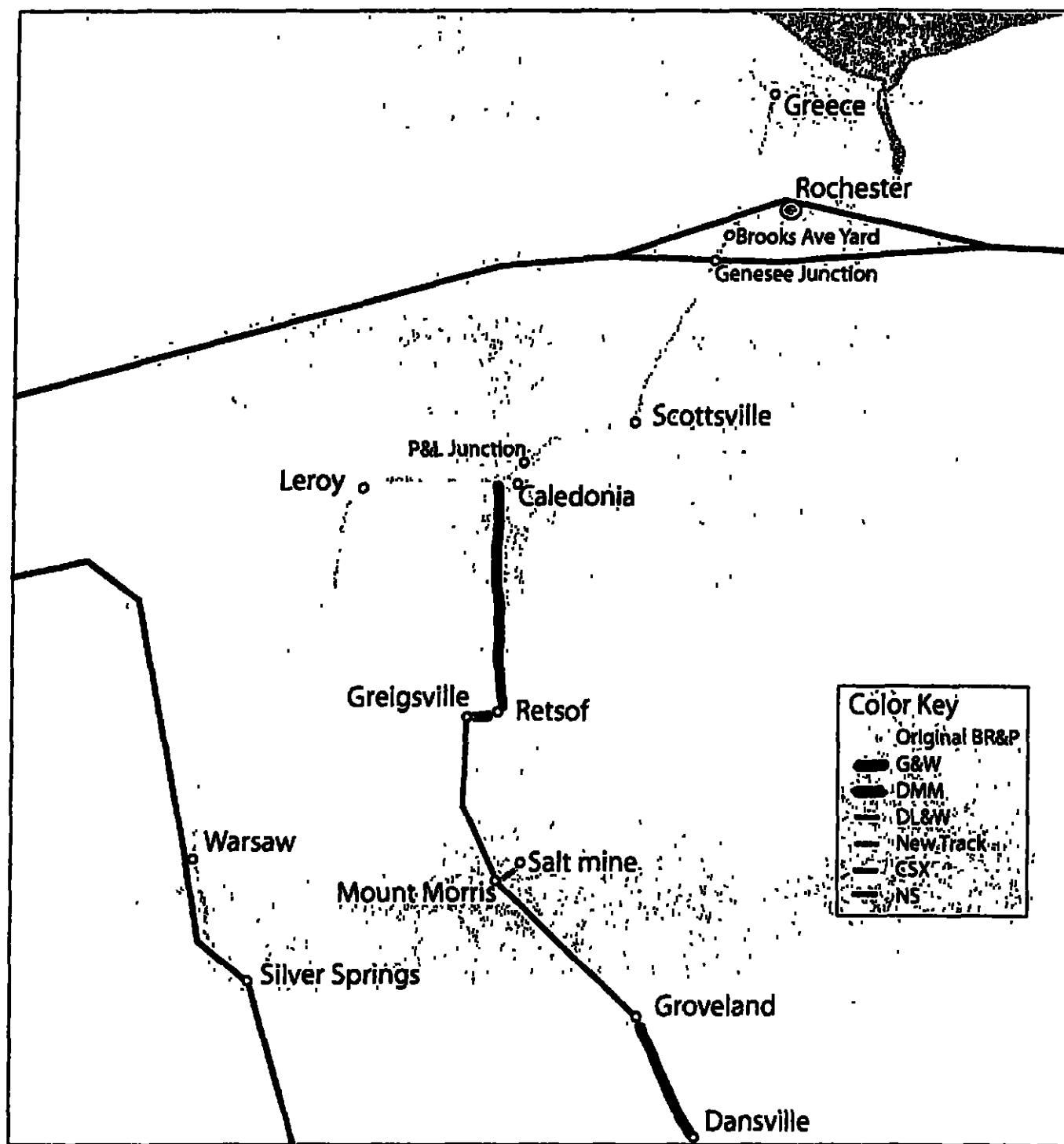
Mark W. Hastings, being duly sworn, deposes and says that he has read the foregoing
Petition for Exemption, knows the facts asserted therein, and that the same are true as stated to
the best of his knowledge

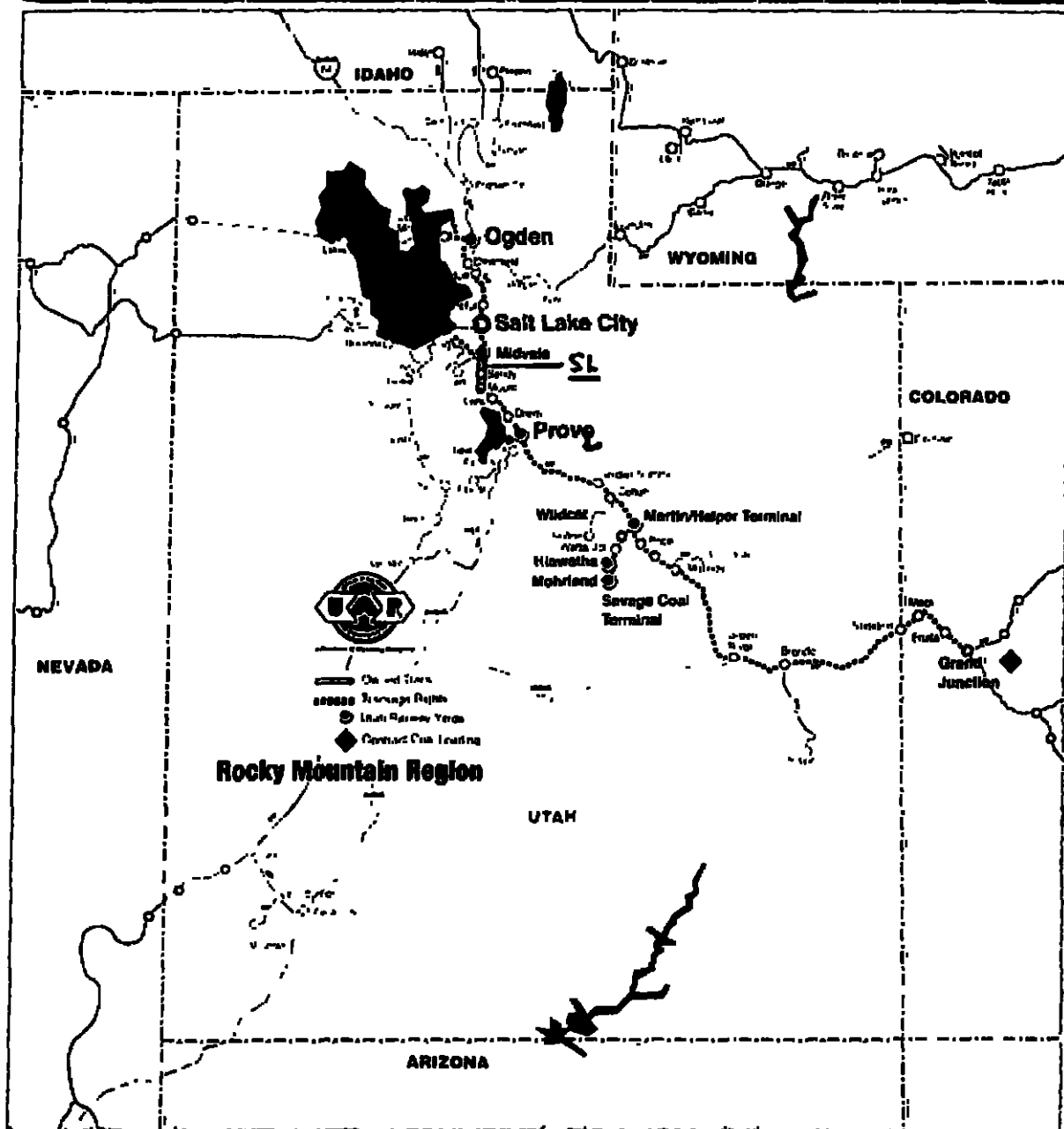
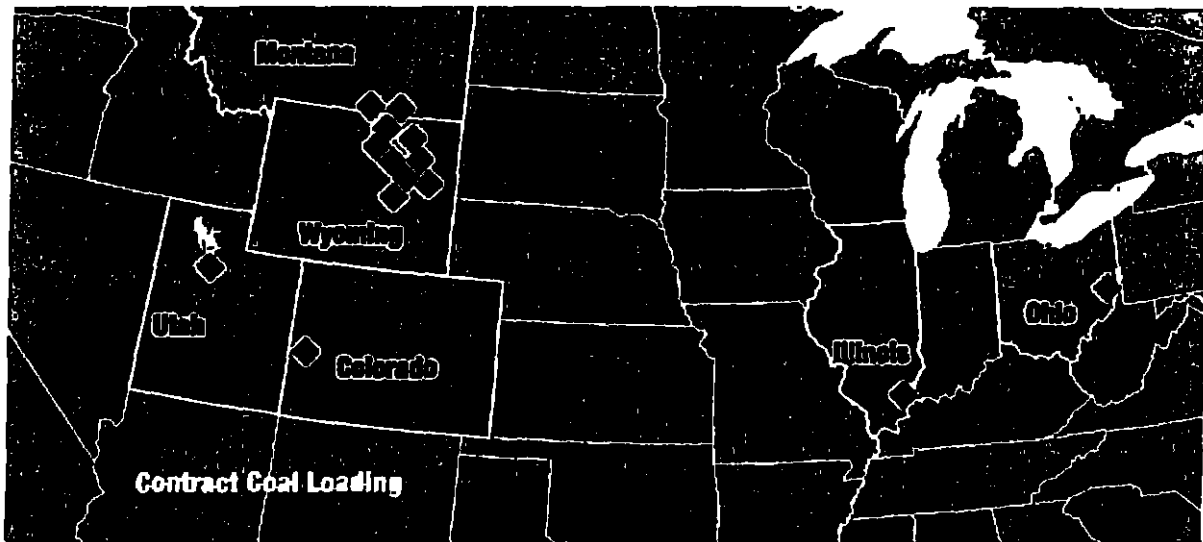


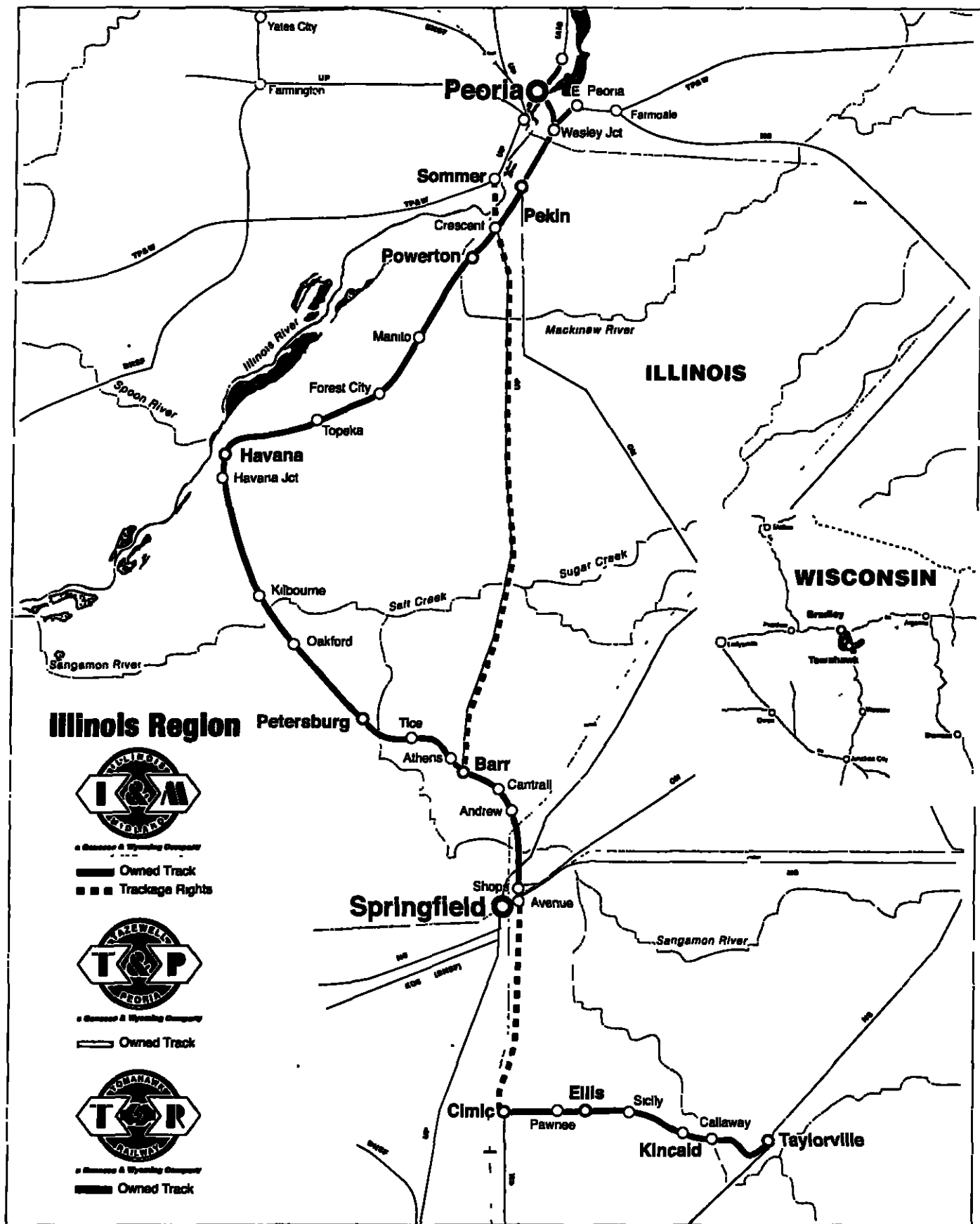
Mark W. Hastings
Executive Vice President
Genesee & Wyoming Inc.

Subscribed and sworn to before me this 30th day of September, 2008

EXHIBIT 1



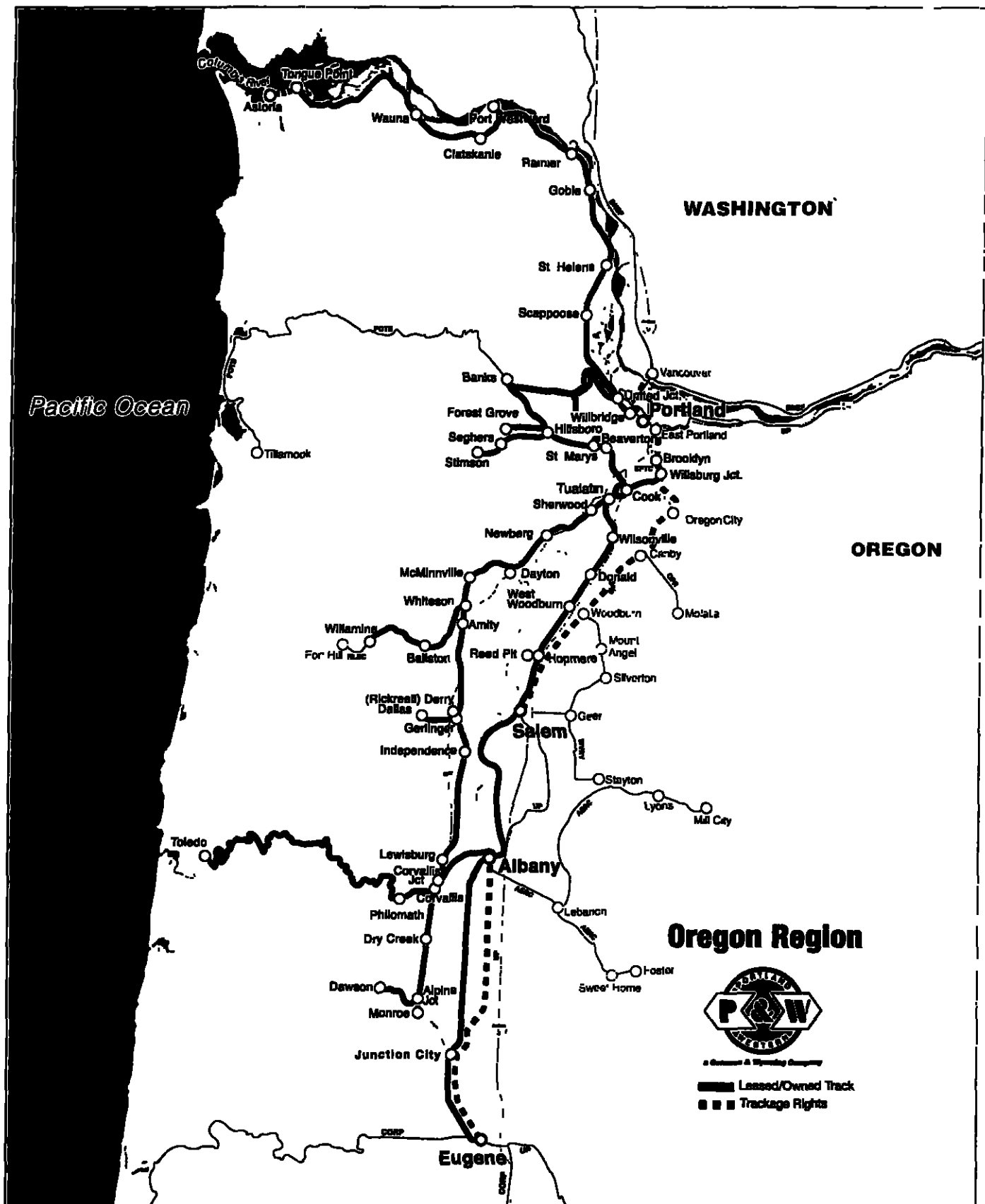


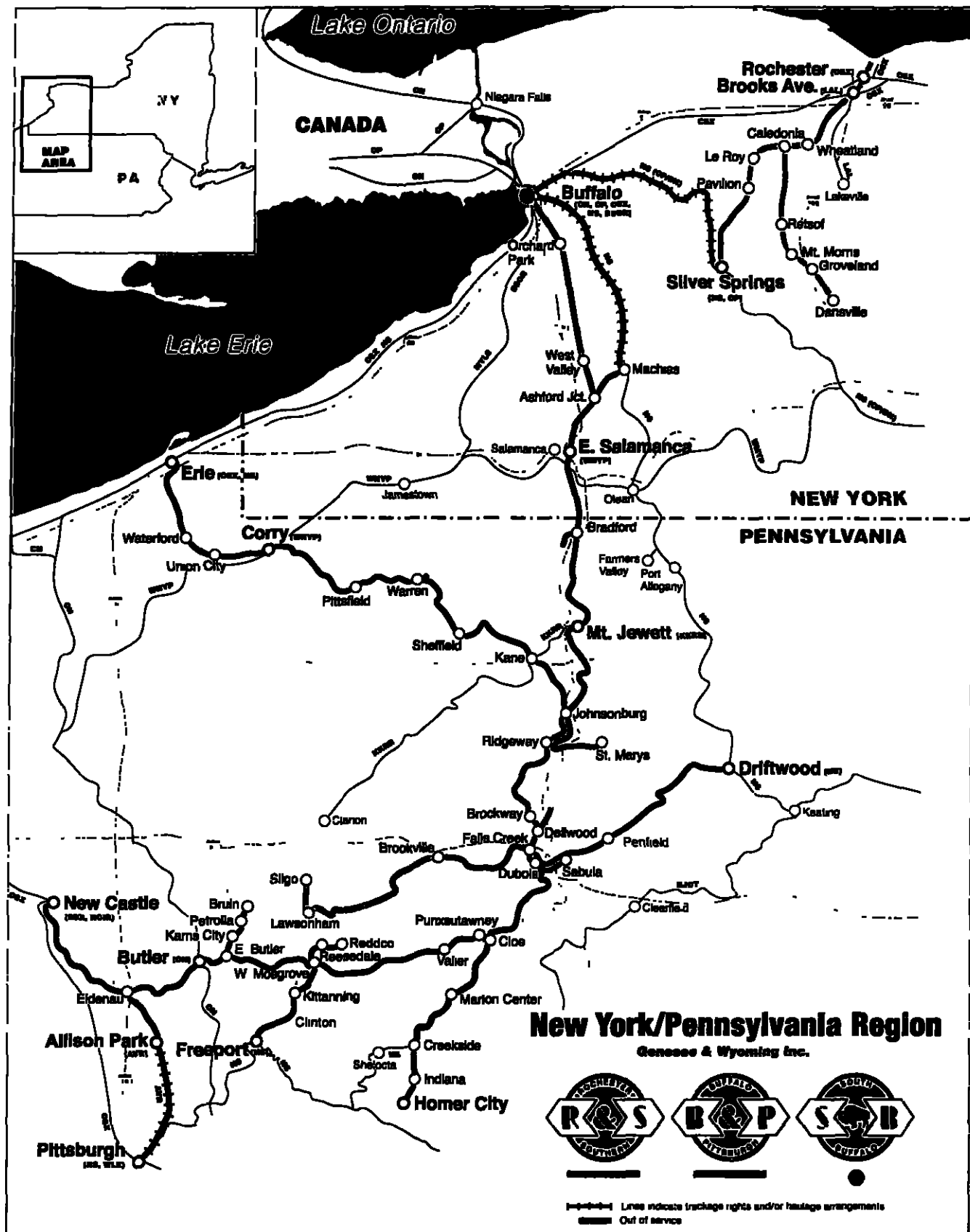


Illinois & Midland Railroad, Inc.
 1500 North Grand Avenue East
 Springfield, Illinois 62702
 217-788-8601

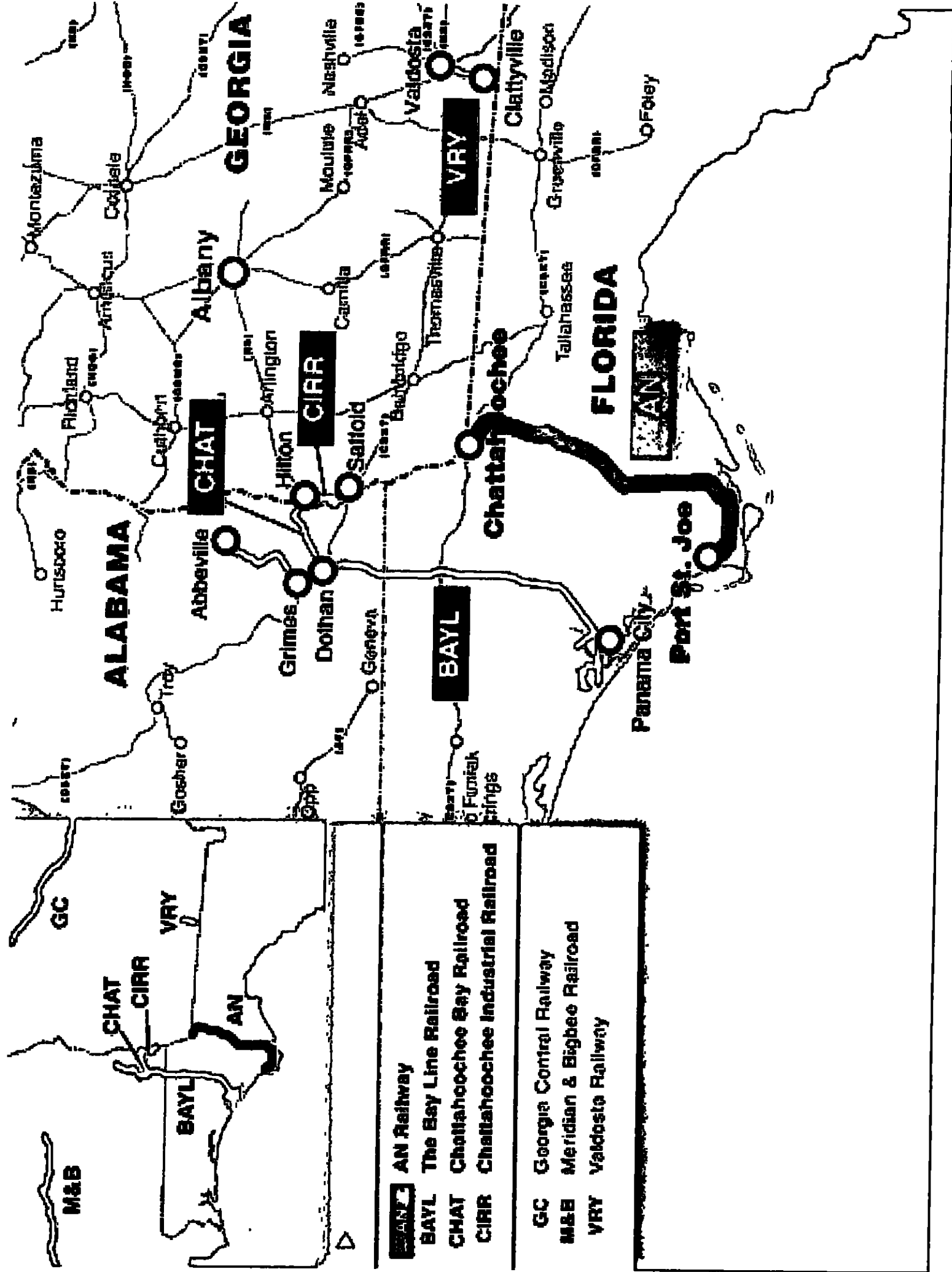
Tazewell & Peoria Railroad, Inc.
 301 Wesley Road
 Crave Coeur Illinois 61610
 309-694-8619

Tomahawk Railway, L.P.
 301 Marinette Street
 Tomahawk Wisconsin 54487
 715-453-2303



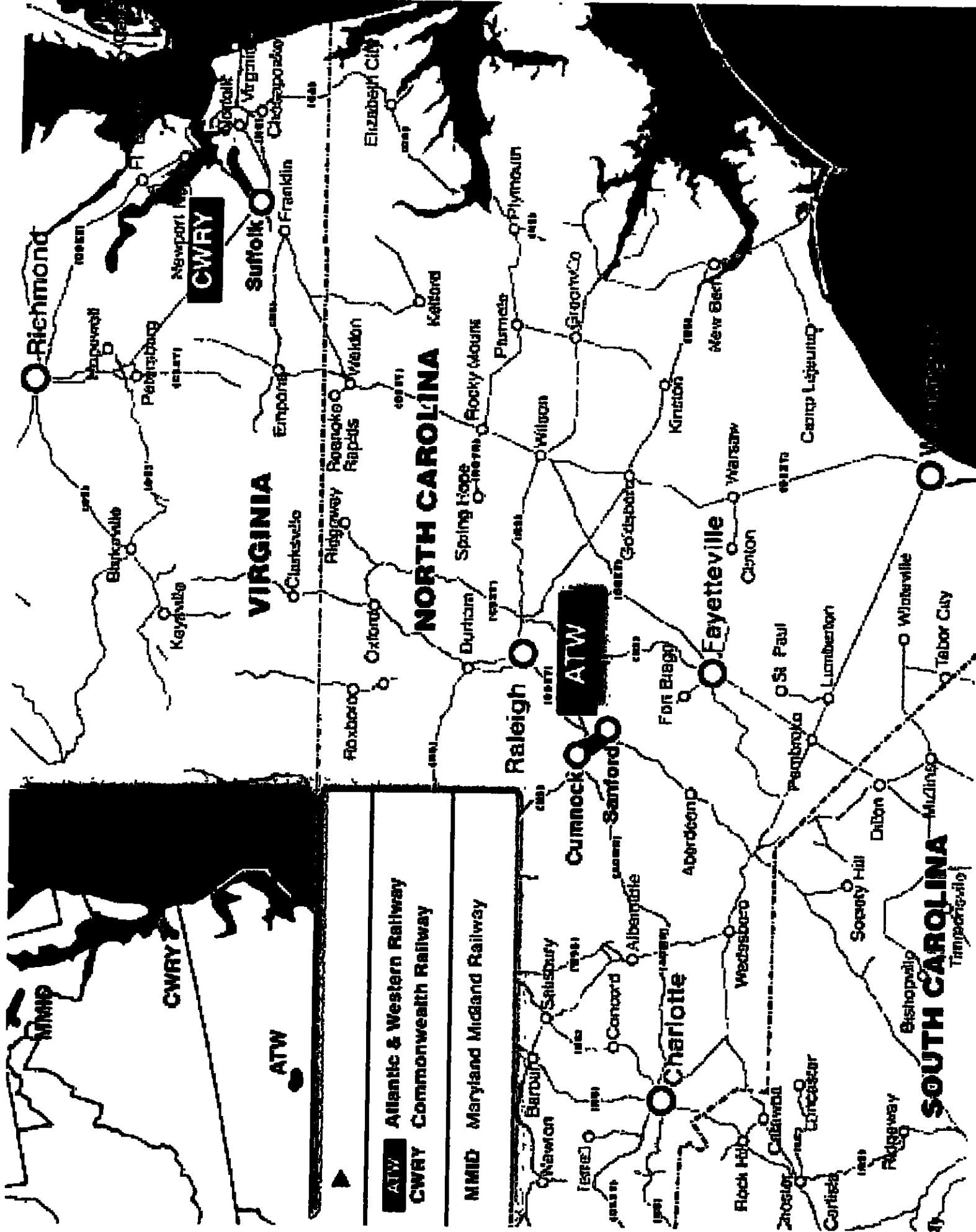


Buffalo & Pittsburgh Railroad, Inc.
 Rochester & Southern Railroad, Inc.
 South Buffalo Railway Company
 1200-C Scottsville Road, Suite 200
 Rochester, New York 14624
 585-328-8601



AN Railway
BAYL The Bay Line Railroad
CHAT Chattahoochee Bay Railroad
CIRR Chattahoochee Industrial Railroad

GC Georgia Central Railway
M&B Meridian & Bigbee Railroad
VRV Valdosta Railroad



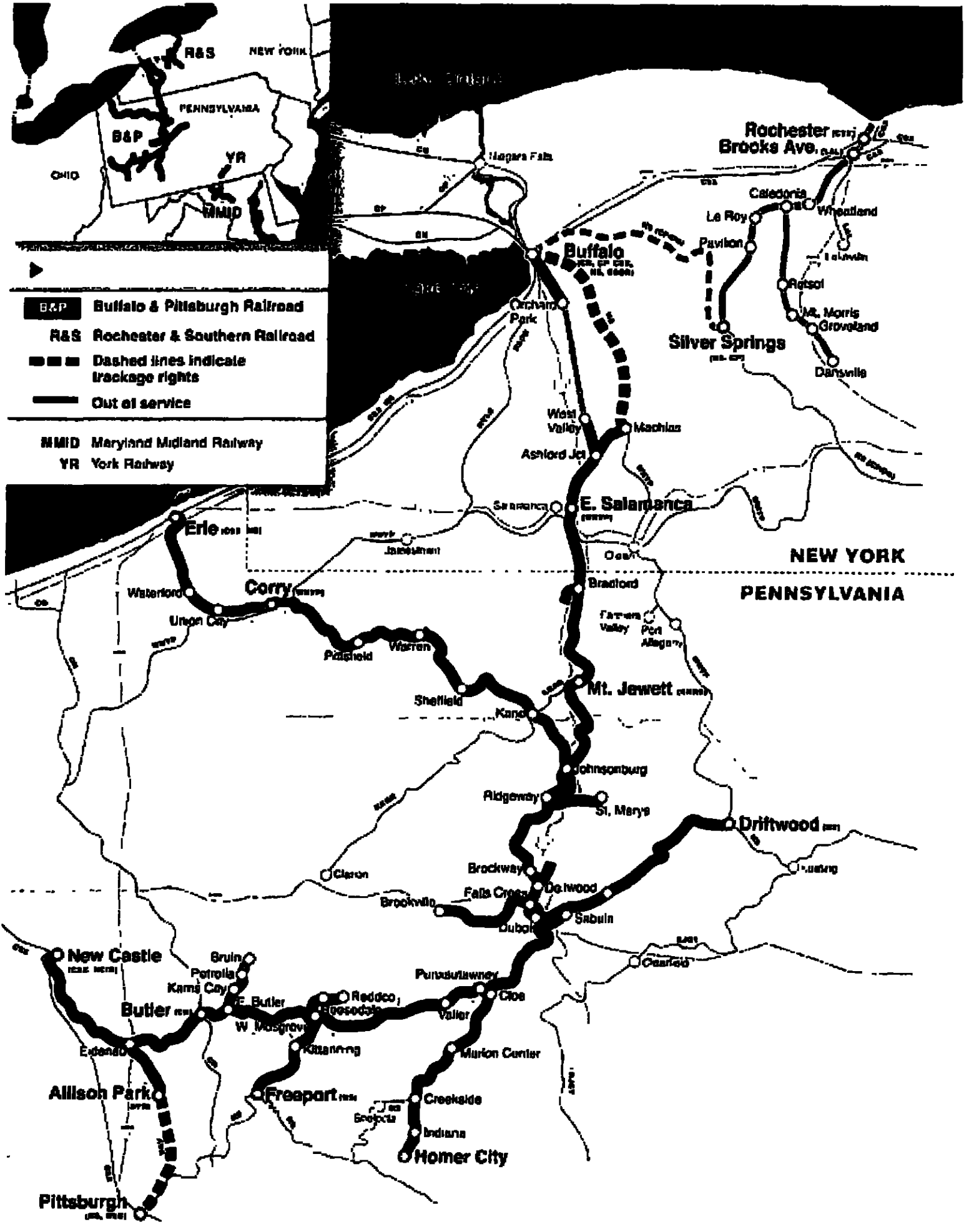
CWR

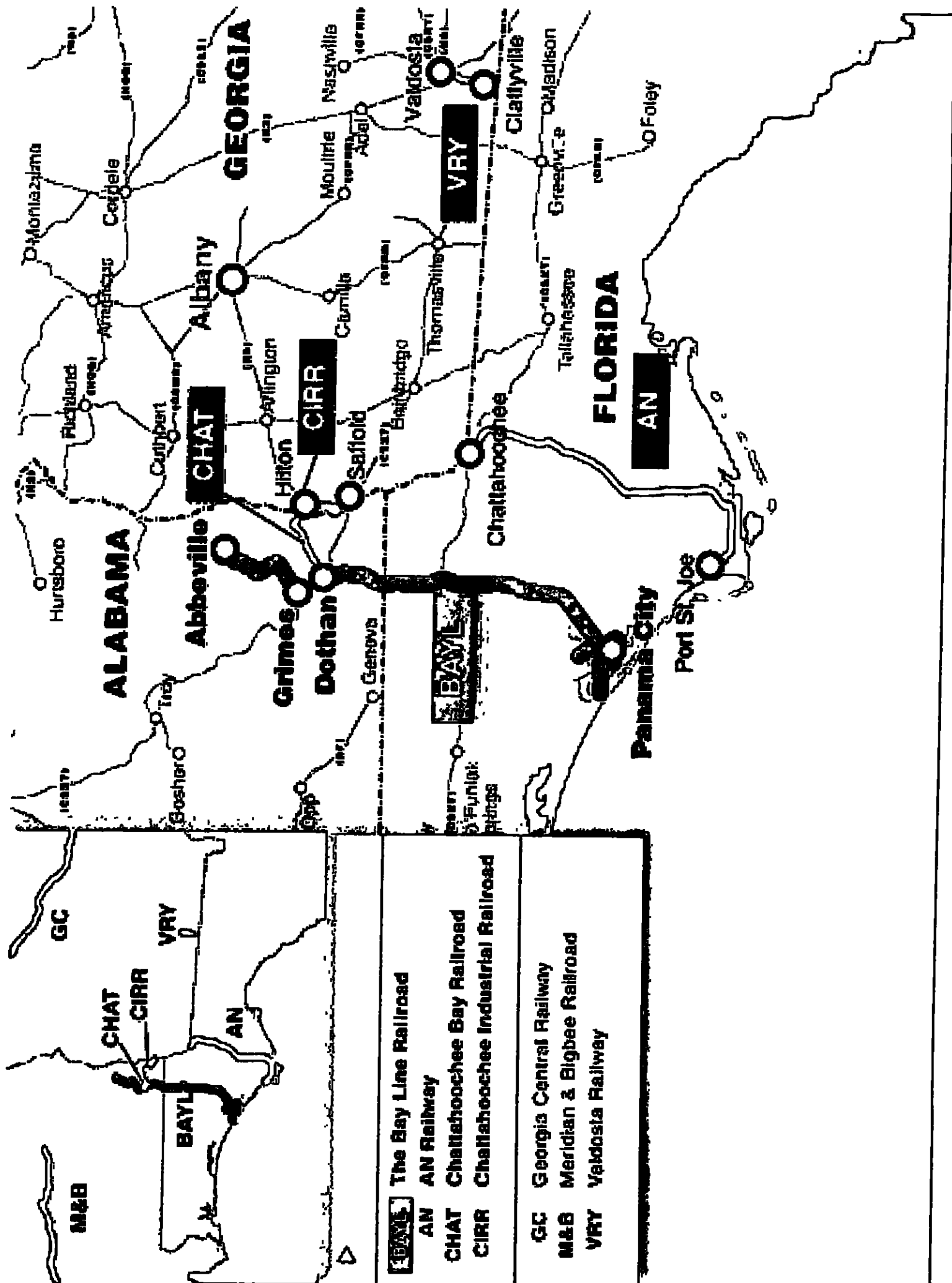
ATW

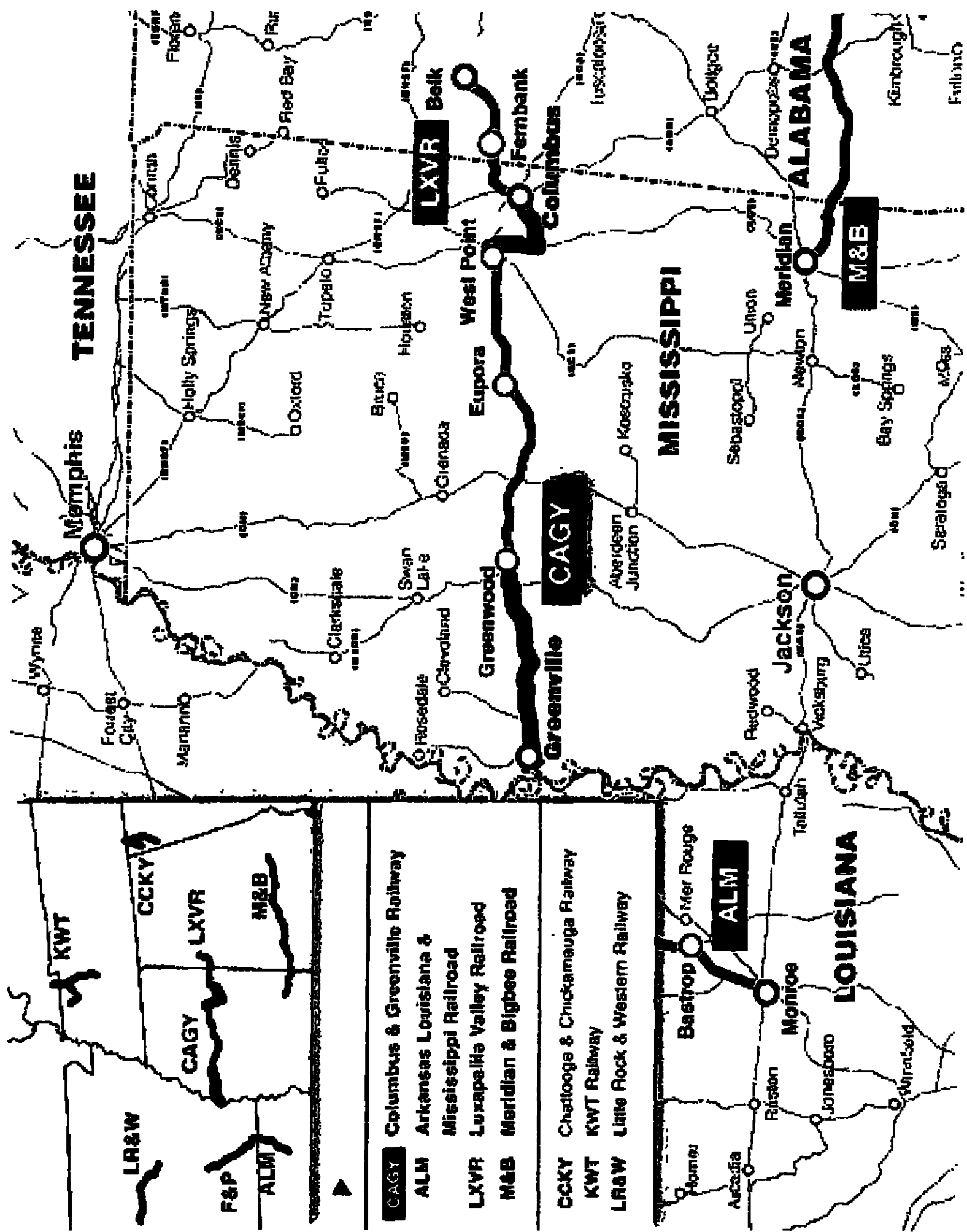
ATW Atlantic & Western Railway
CWR Commonwealth Railway

MMMD Maryland Midland Railway

SOUTH CAROLINA
Timpanogochie







CAGY Columbus & Greenville Railway

ALM Arkansas Louisiana & Mississippi Valley Railroad

LXVR Luxapallia Valley Railroad

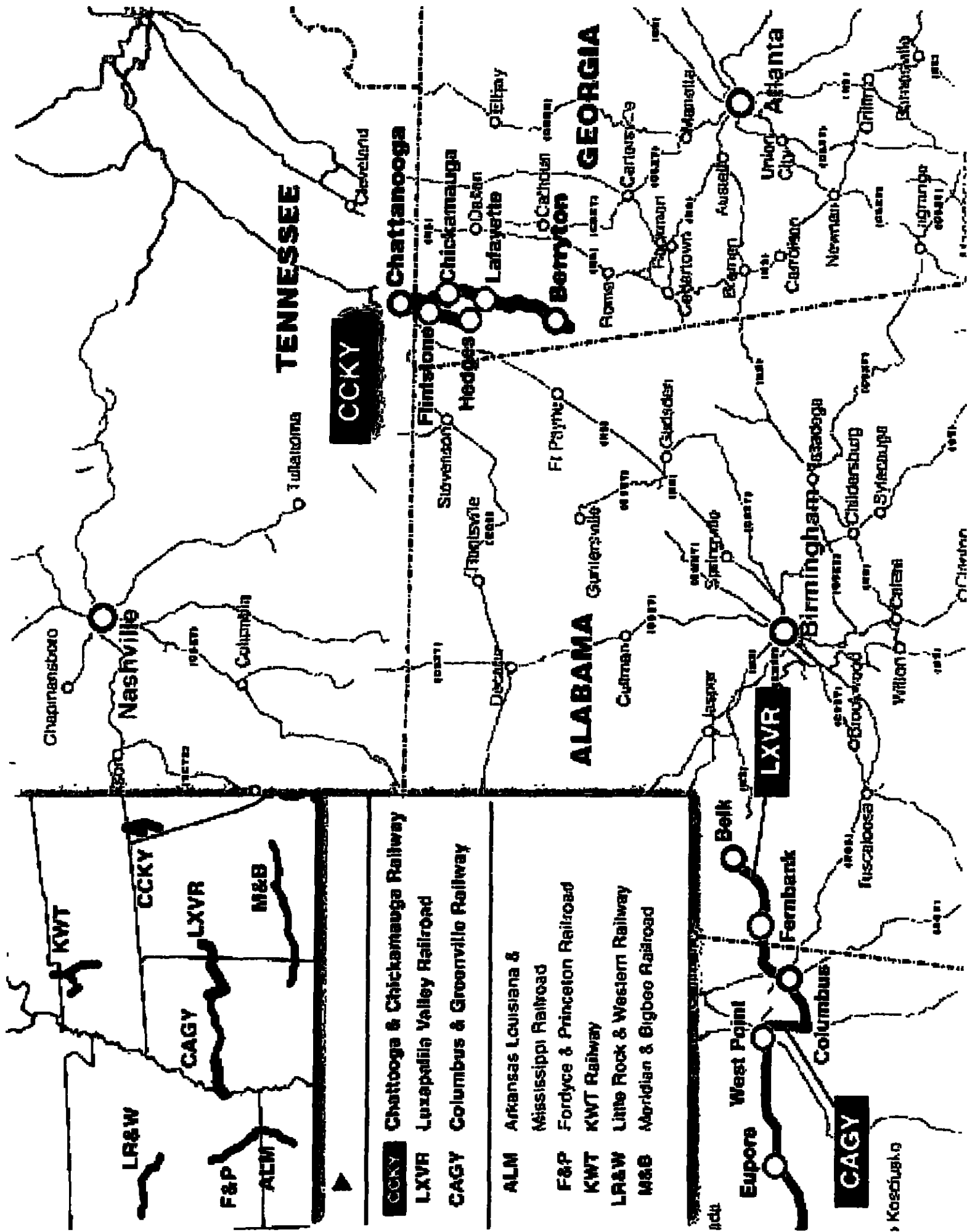
M&B Meridian & Bigbee Railroad

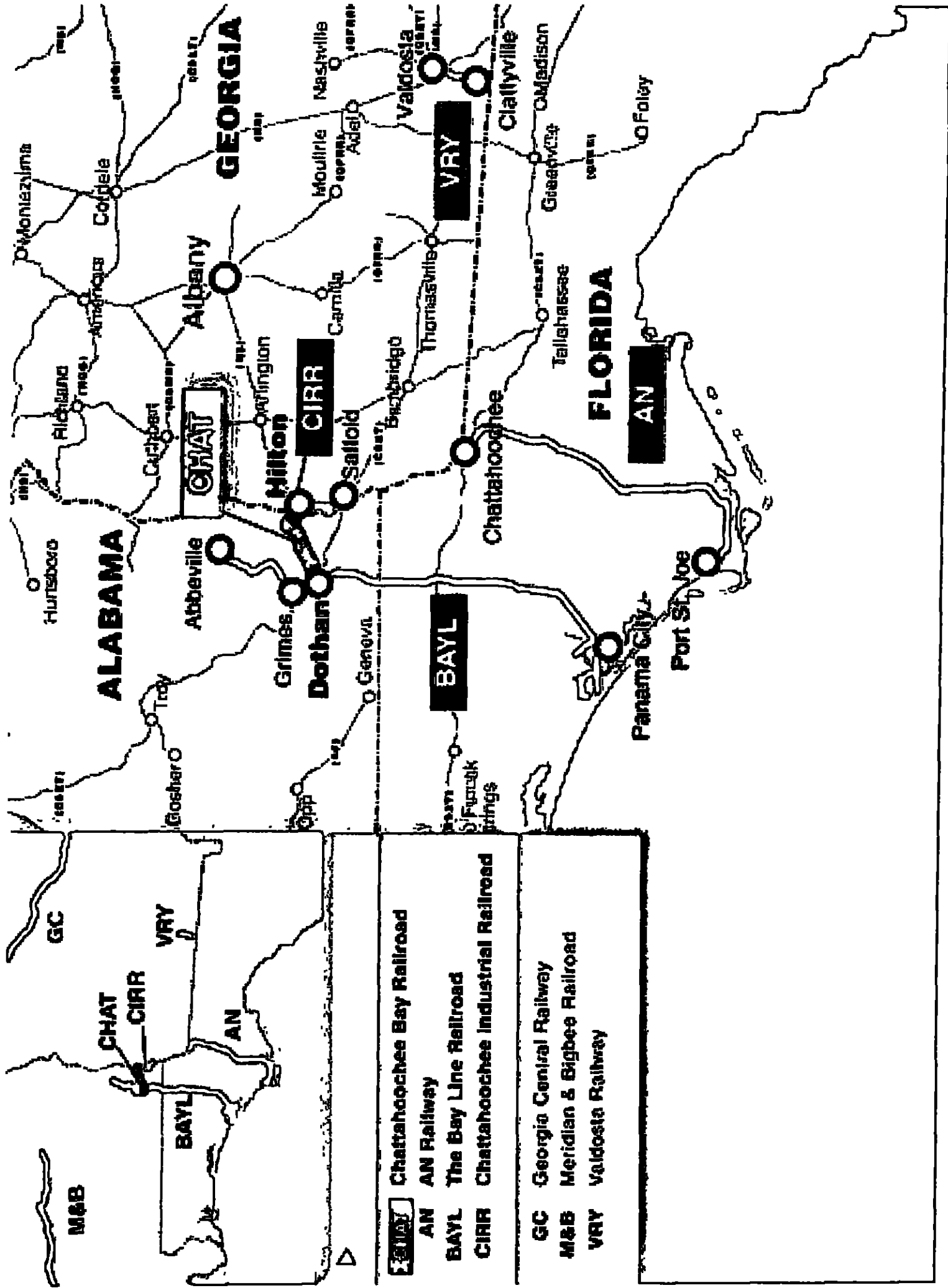
CCKY Chattooga & Chickamauga Railway

KWT KWT Railway

LRAW Little Rock & Western Railway

ALM

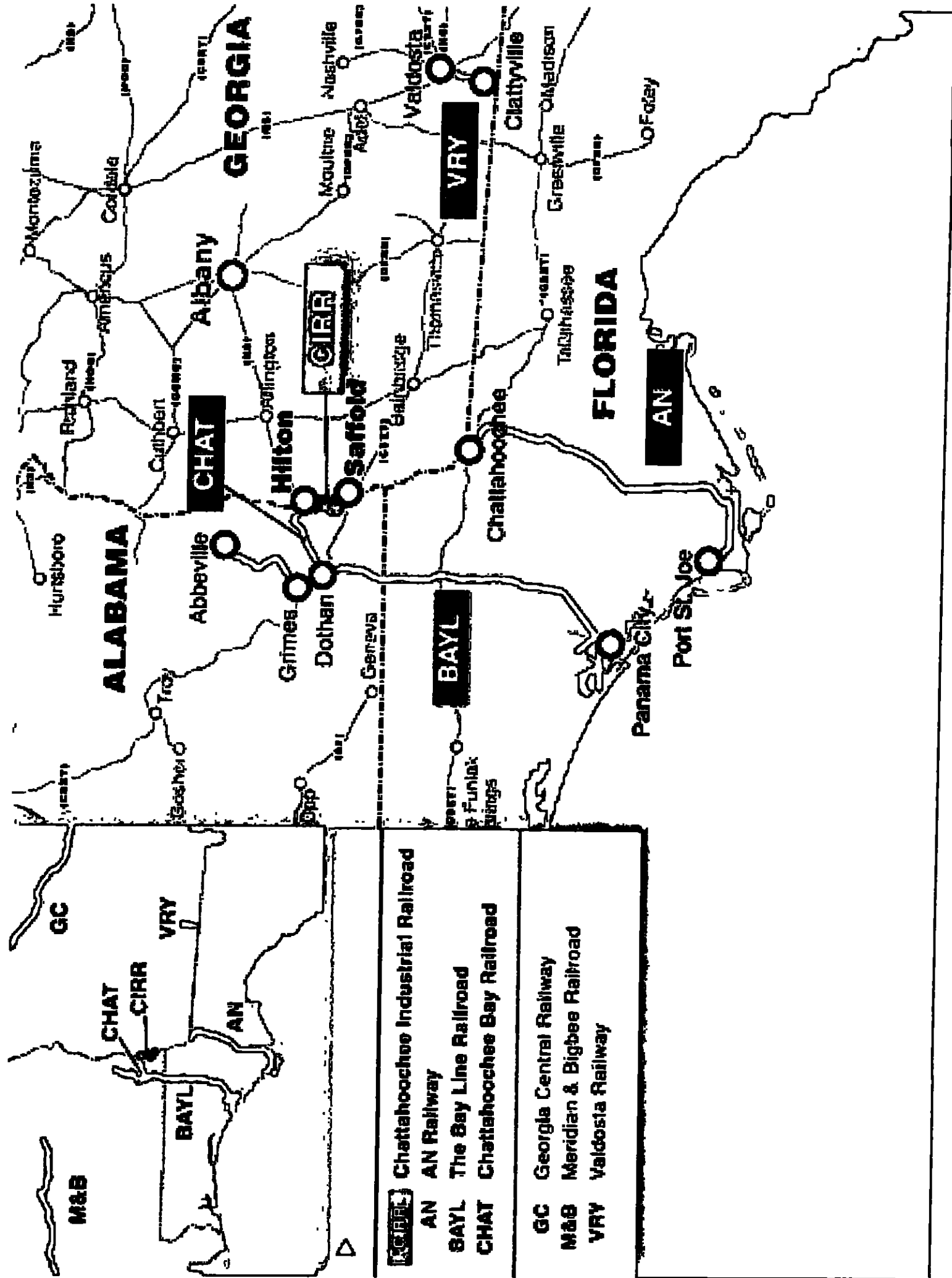


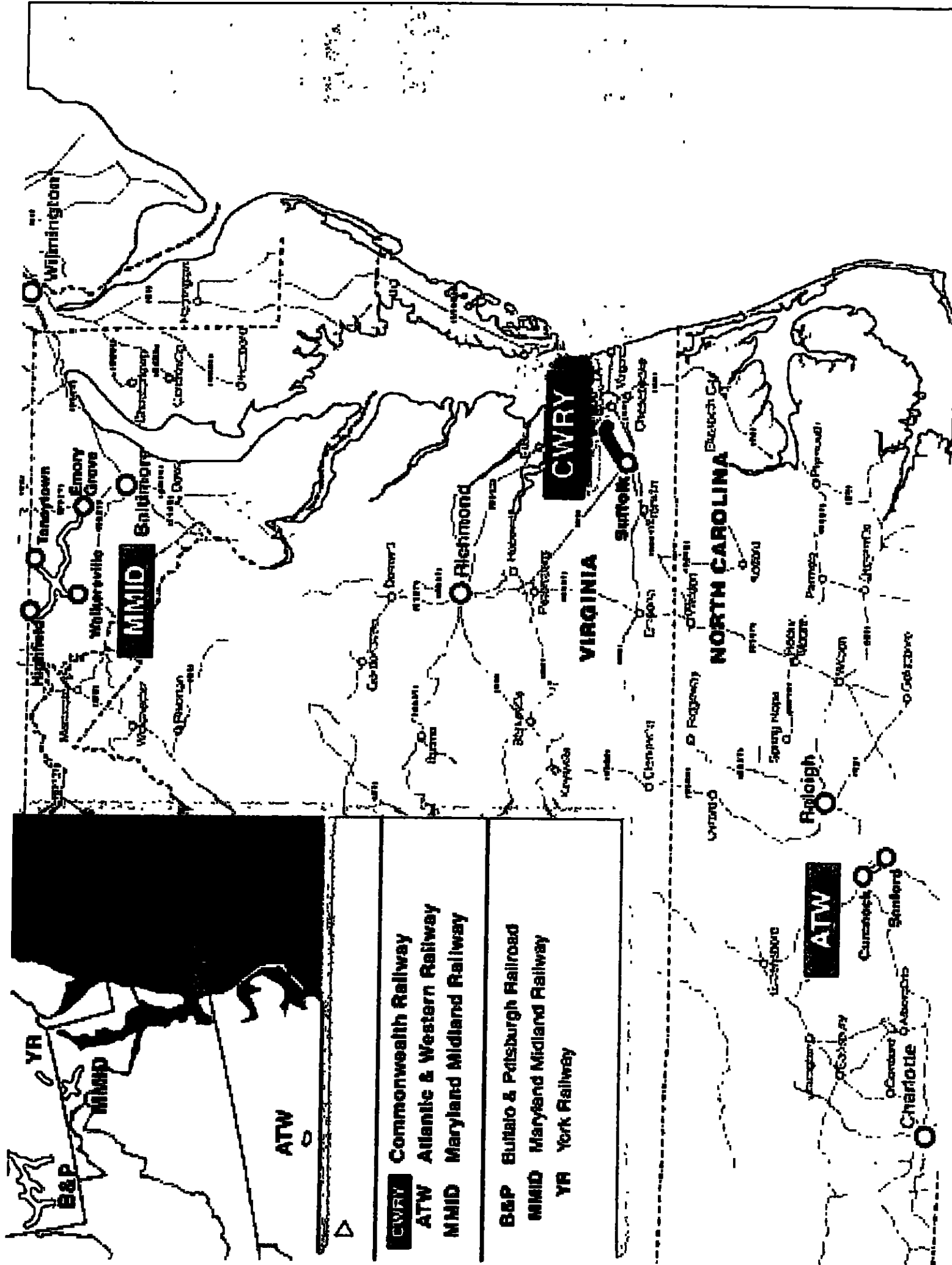


Legend

AN AN Railway
 BAYL The Bay Line Railroad
 CIRR Chattahoochee Industrial Railroad

GC Georgia Central Railway
 M&B Meridian & Bigbee Railroad
 VRY Valdosta Railroad

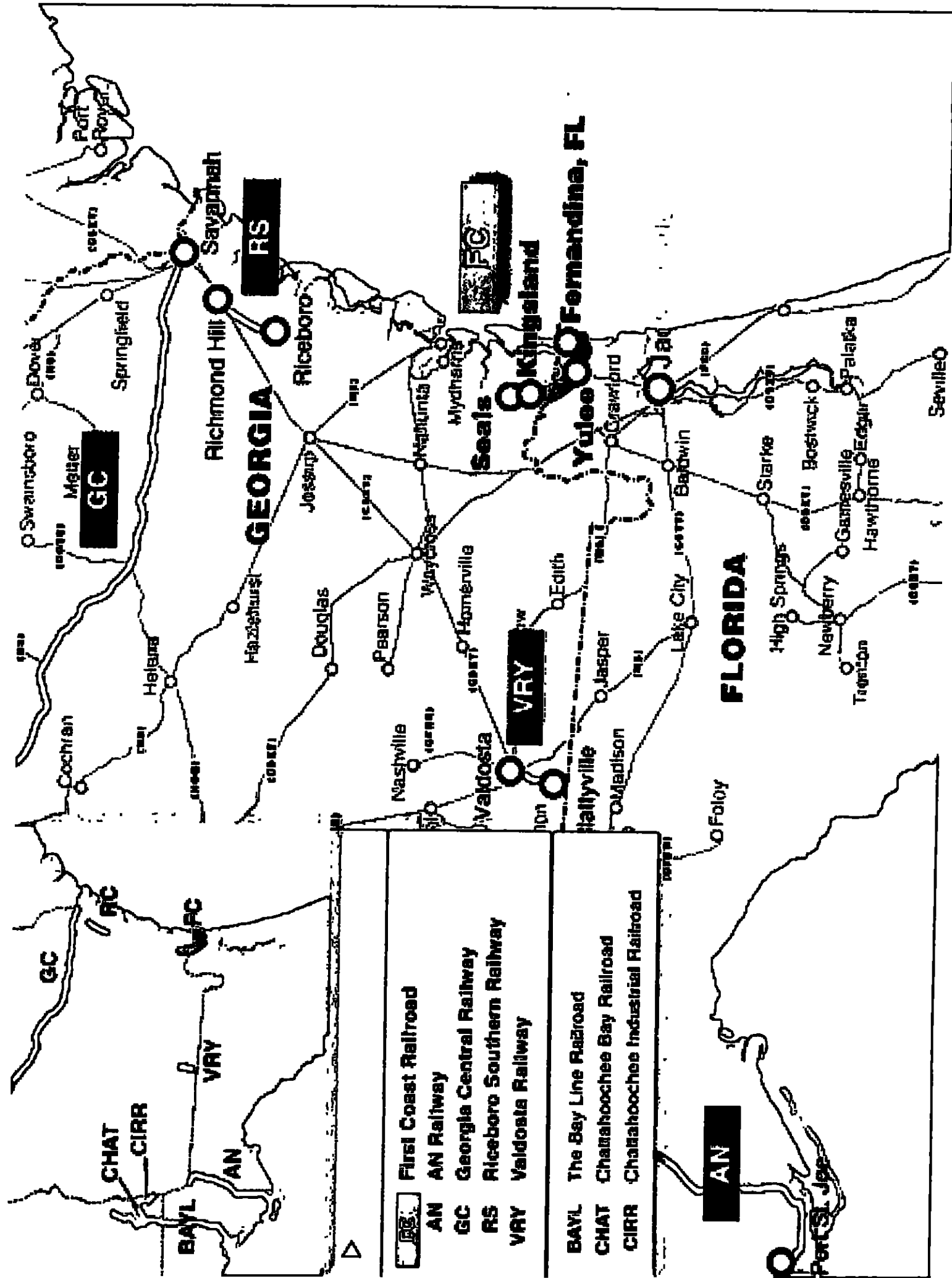


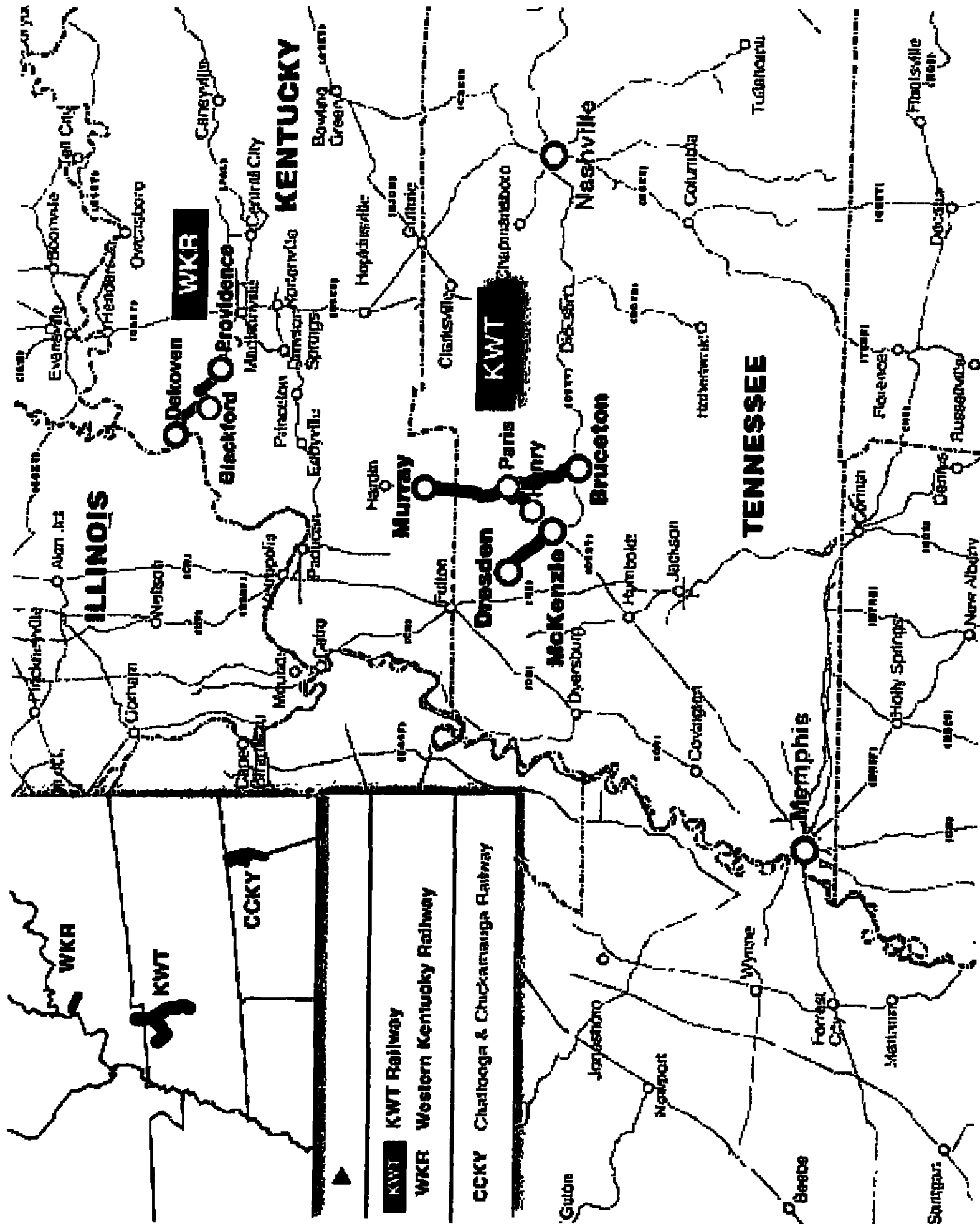


CWRY Commonwealth Railway
ATW Atlantic & Western Railway
MMID Maryland Midland Railway

B&P Buffalo & Pittsburgh Railroad
MMID Maryland Midland Railway
YR York Railway

ATW Atlantic & Western Railway
Charlotte
Spartanburg
Clemson
Spartanburg

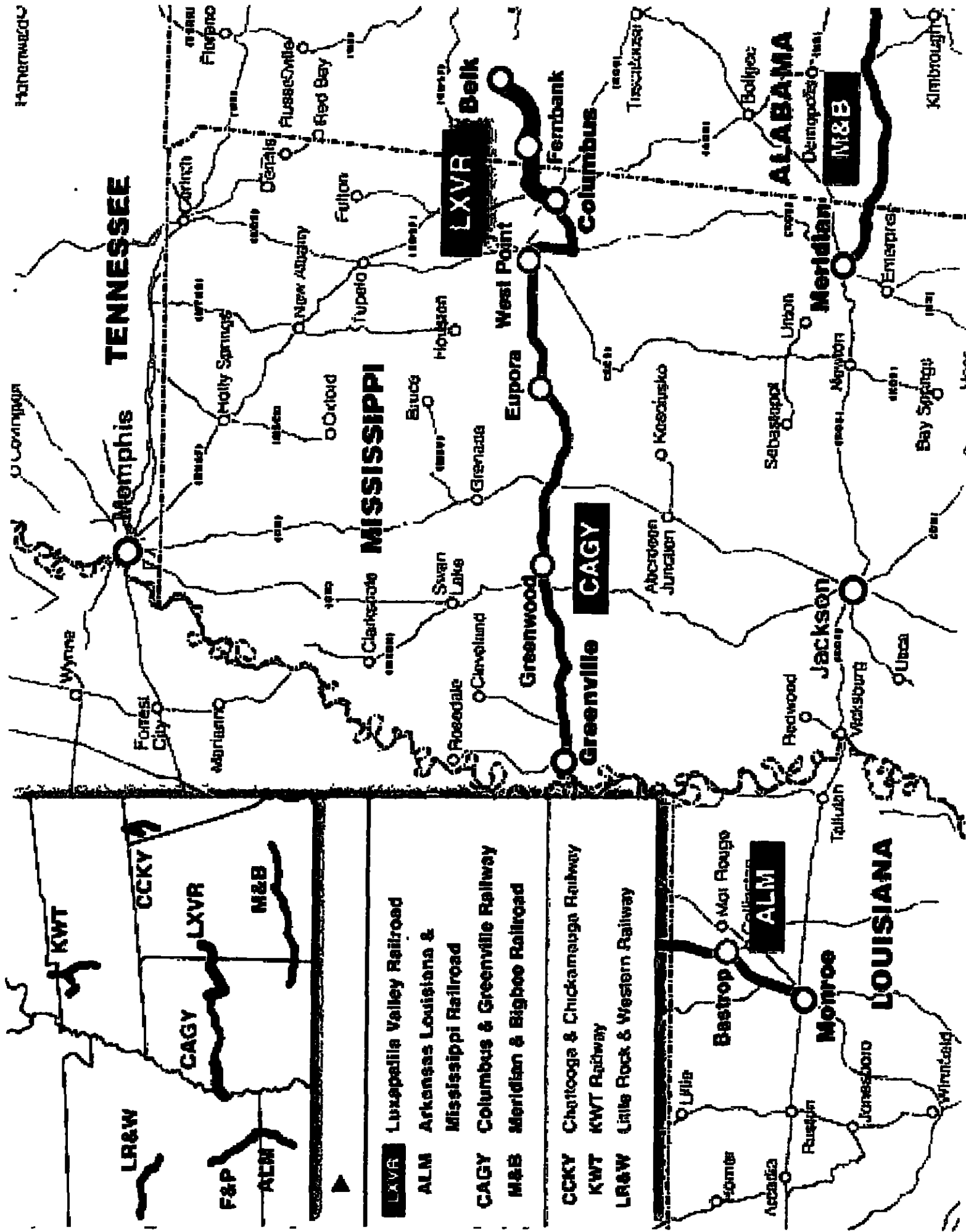


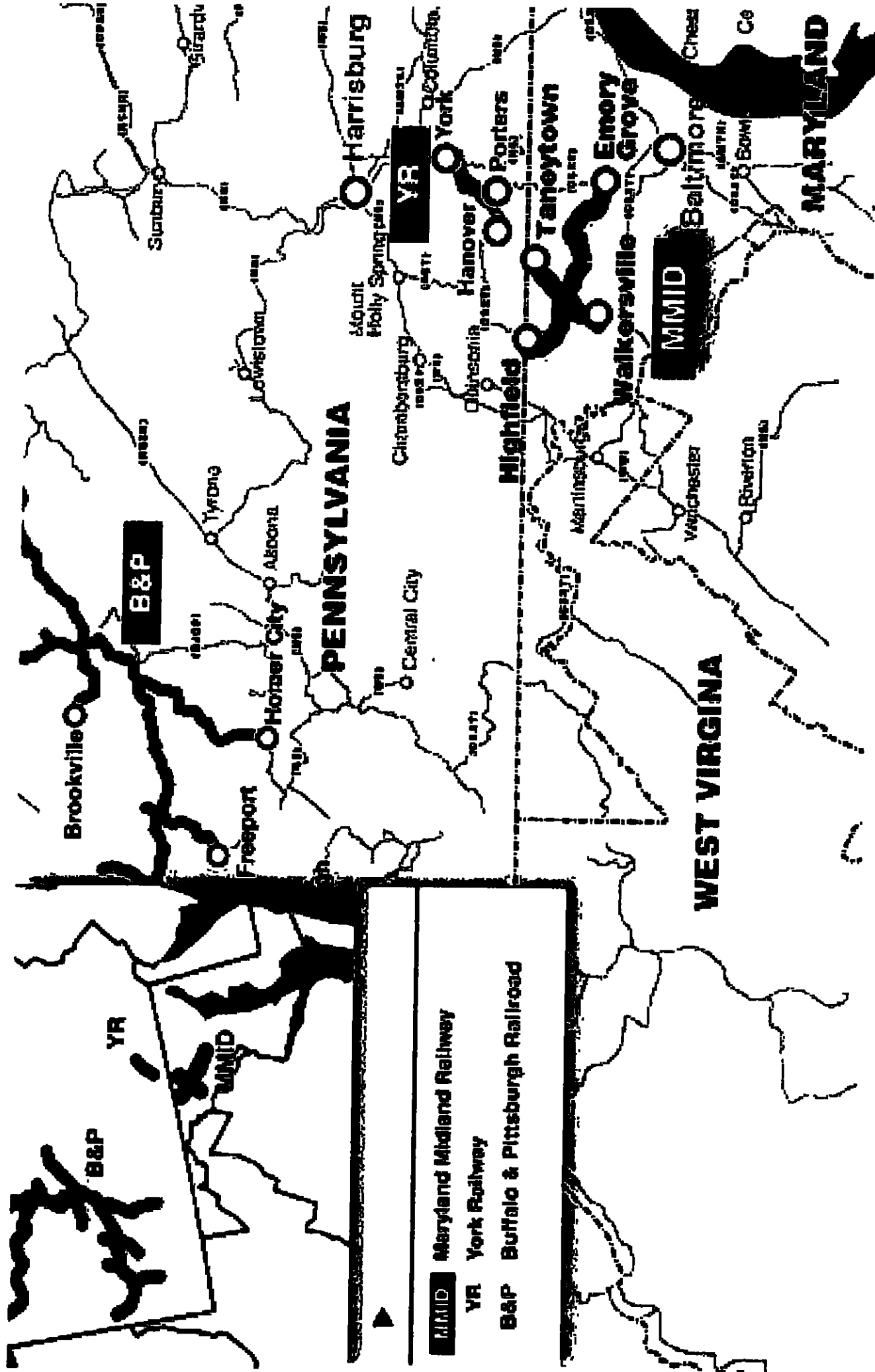


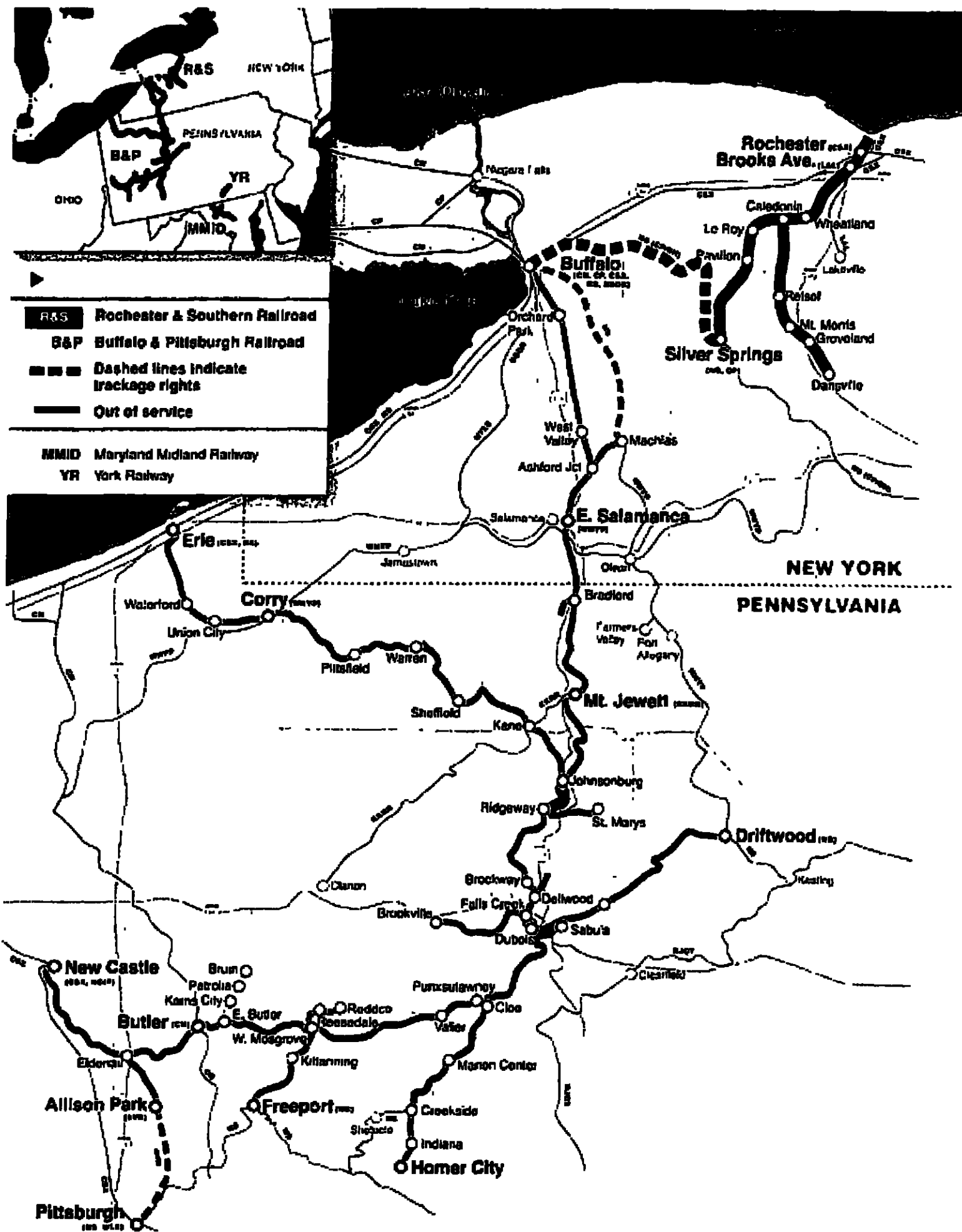
KWT KWT Railway

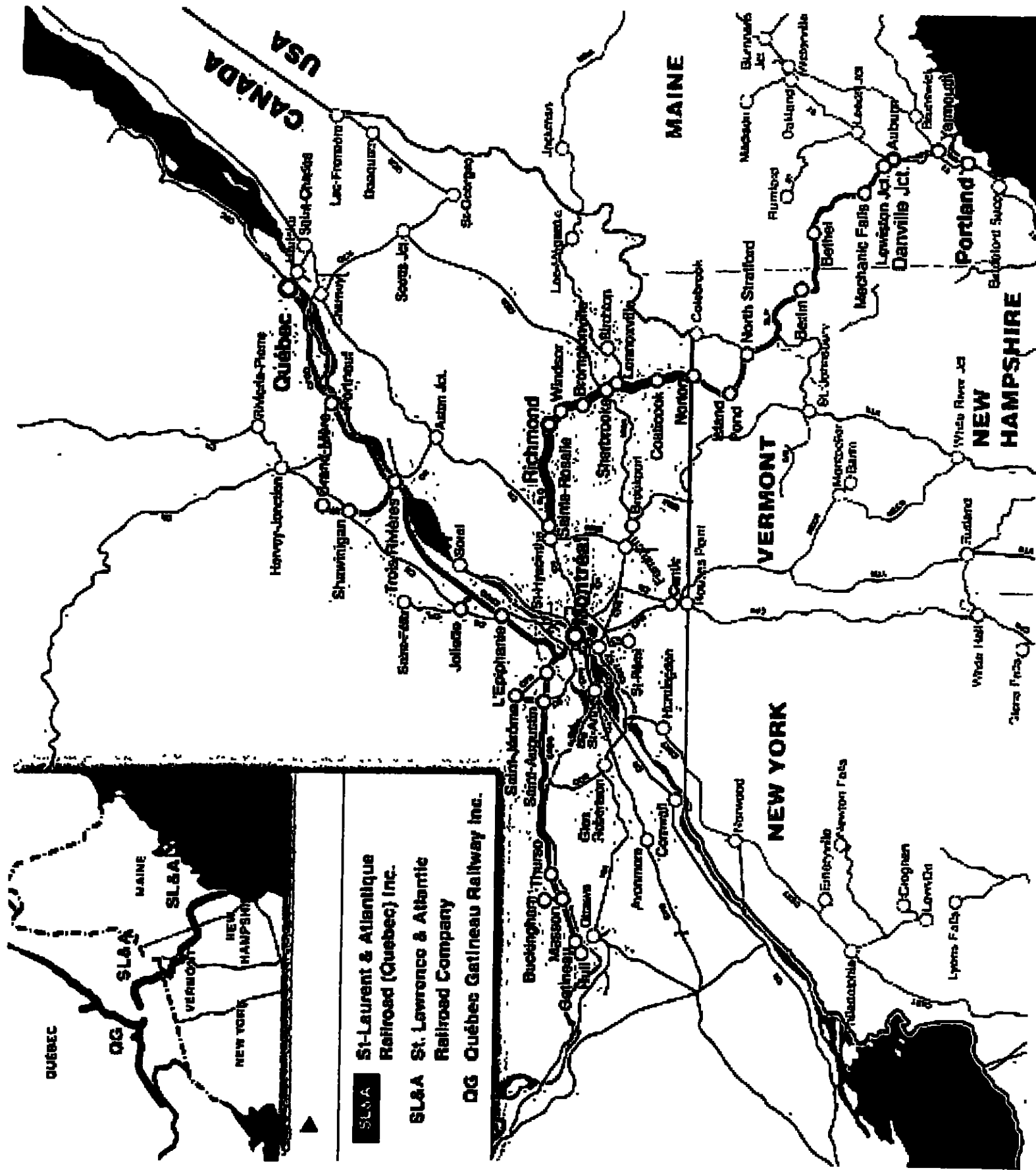
WKR Western Kentucky Railway

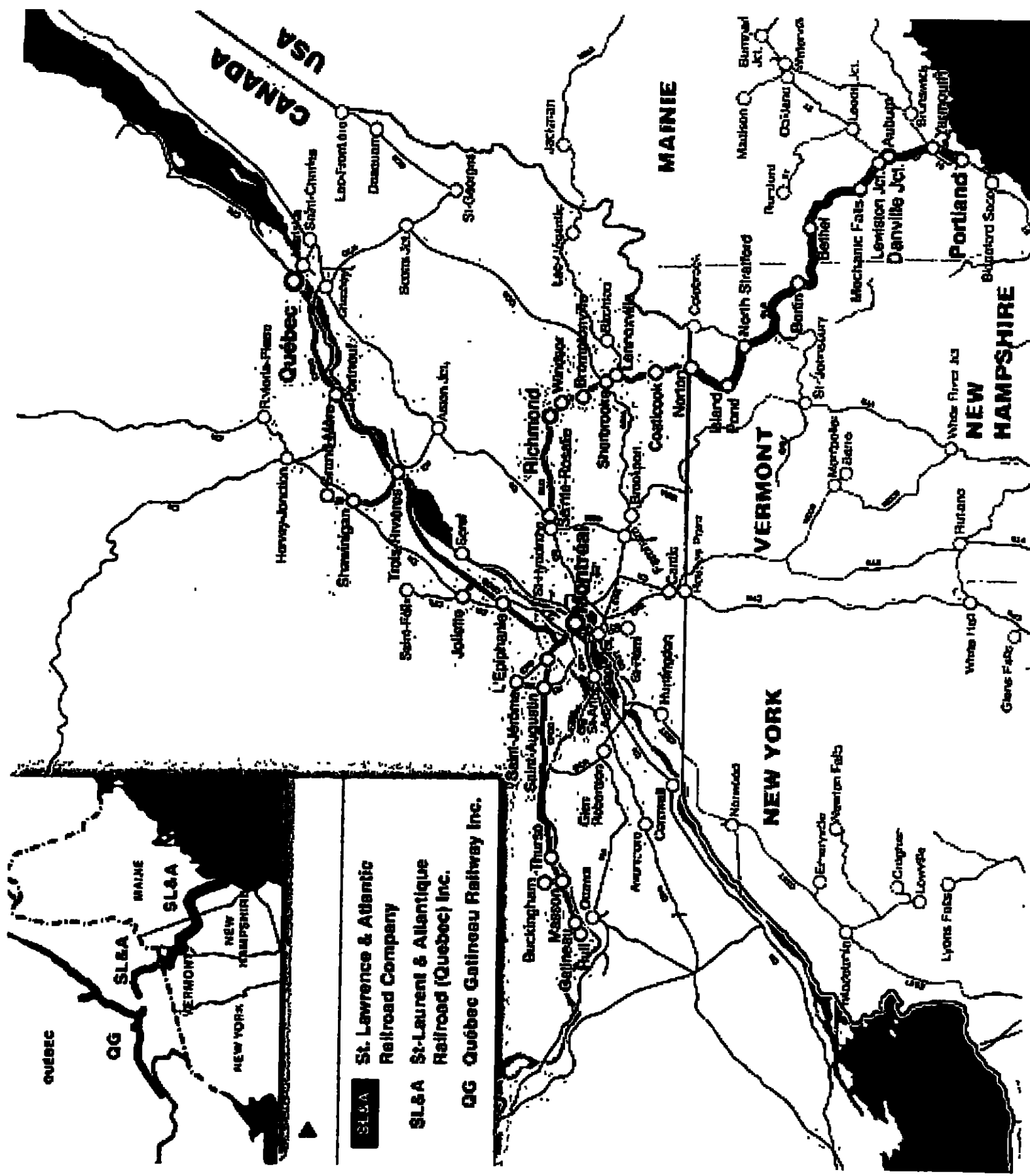
CCKY Chattanooga & Chickamauga Railway

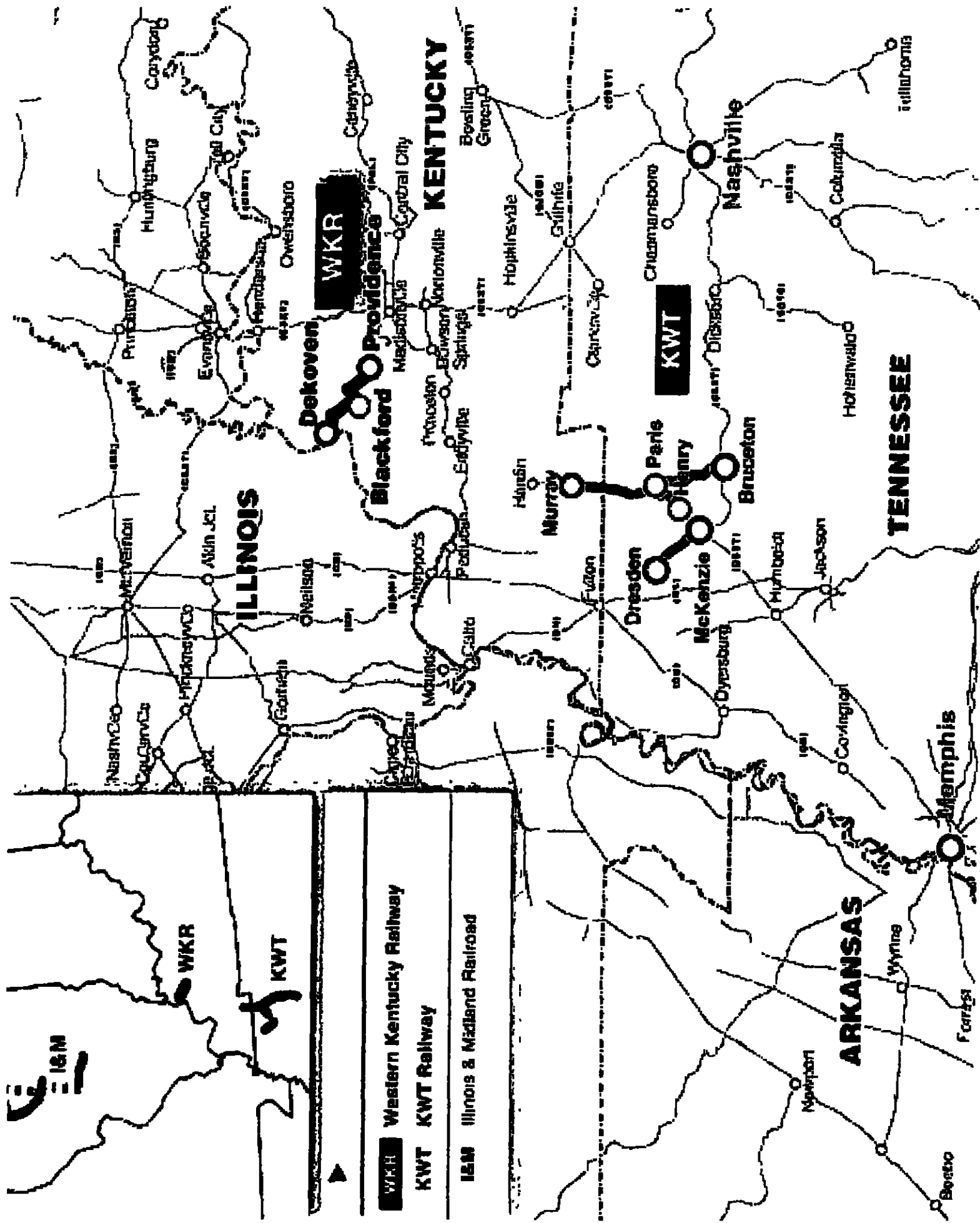


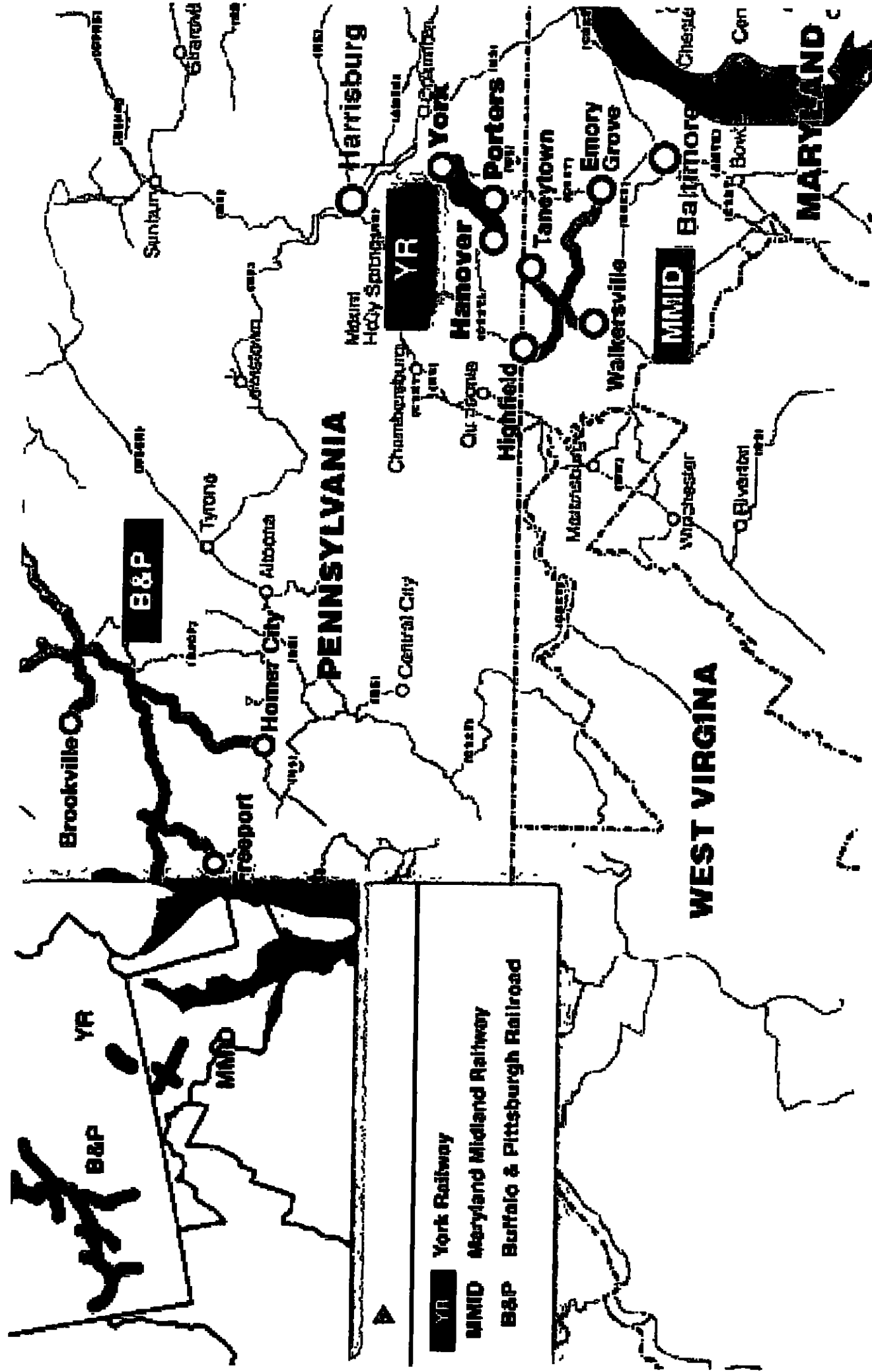












Genesee & Wyoming Inc. Port Railroads

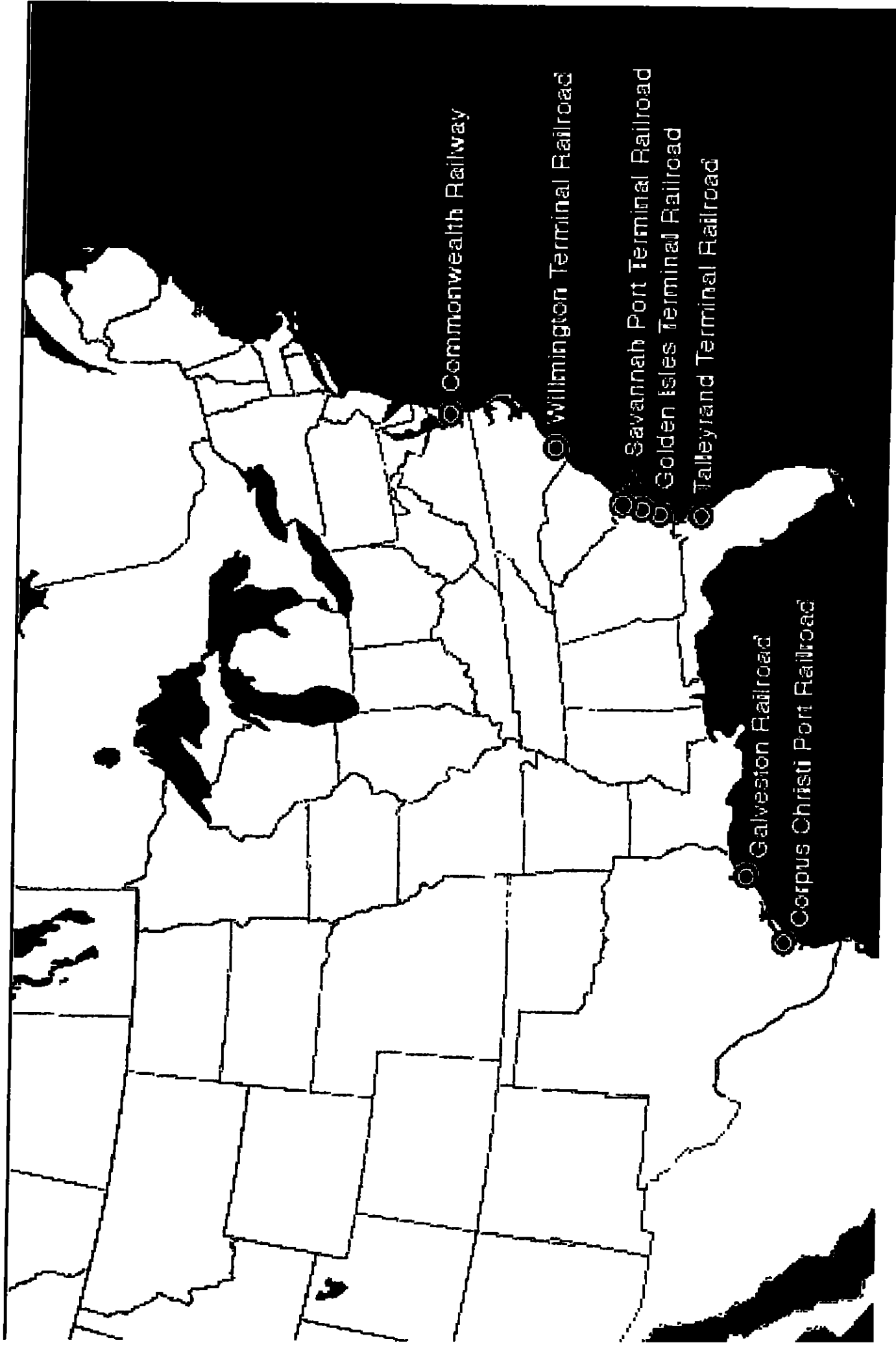


EXHIBIT 2

Ohio Central

Southern Lines

- Ohio Central Railroad, Inc. (OHCR)
- Ohio Southern Railroad, Inc. (OSRI)
- The Columbus and Ohio River Railroad Company (COOR)

Youngstown Division

- Mahoning Valley Railway Company (MVRC)
- Ohio and Pennsylvania Railroad Corporation (OPOR)
- Warren and Trumbull Railroad Company (WTRC)
- Youngstown and Austintown Railroad Inc. (YARI)
- The Youngstown Belt Railroad Company (YBRC)

Pittsburgh Division

- The Pittsburgh and Ohio Central Railroad (POCR)
- Allegheny and Ohio River Railroad (AORR)

Genesee & Wyoming

- New York/Pennsylvania Region
- Buffalo & Pittsburgh Railroad (BPR)



----- Dashed lines indicate trackage rights

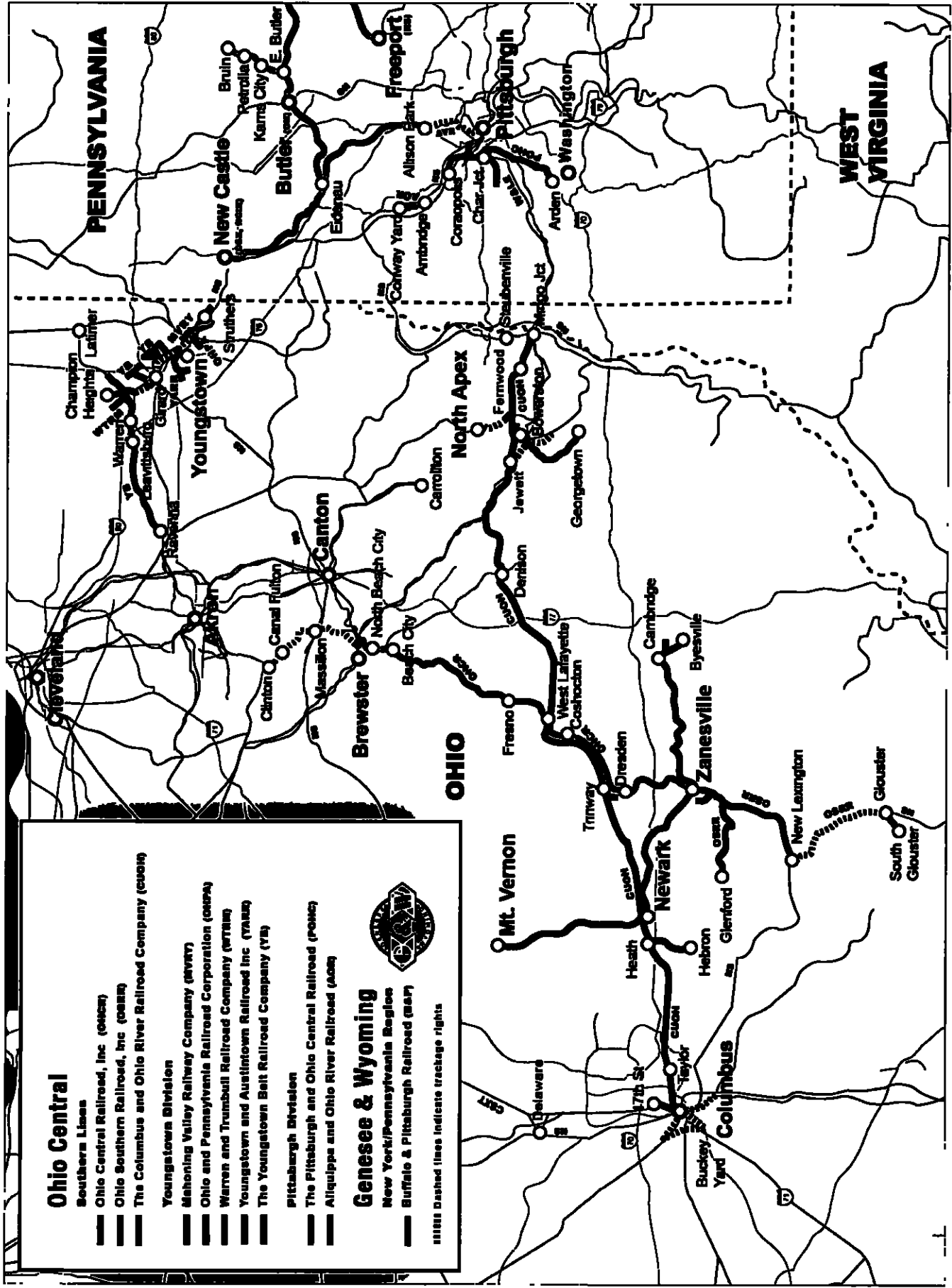


EXHIBIT 3

**AMENDED AND RESTATED
STOCK PURCHASE AGREEMENT**

by and among

SUMMIT VIEW, INC. ,

JERRY JOE JACOBSON

and

GENESEE & WYOMING INC.

Dated as of September 10, 2008

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Disclosure Schedule

Form of Escrow Agreement
[Intentionally Omitted]
Resignation of Officers and Directors

STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED STOCK PURCHASE AGREEMENT, dated as of September 10 , 2008 (this "Agreement"), by and among Summit View, Inc., an Ohio corporation ("Summit View"), Jerry Joe Jacobson, the owner of all of the issued and outstanding shares of Summit View (the "Seller"), and Genesee & Wyoming Inc , a Delaware corporation (the "Buyer").

W I T N E S S E T H:

WHEREAS, the Seller owns all of the issued and outstanding shares of common stock, without par value, of Summit View;

WHEREAS, Summit View is engaged in the railroad business through its ownership of all of the issued and outstanding shares of The Aliquippa & Ohio River Railroad Co , an Ohio corporation; The Columbus and Ohio River Rail Road Company, an Ohio corporation; The Mahoning Valley Railway Company, an Ohio corporation; Ohio and Pennsylvania Railroad Company, an Ohio corporation, Ohio Central Railroad, Inc., an Ohio corporation, The Pittsburgh & Ohio Central Railroad Company, an Ohio corporation, Ohio Southern Railroad, Inc., an Ohio corporation; Youngstown & Austintown Railroad, Inc., an Ohio corporation; The Youngstown Belt Railroad Company, an Ohio corporation; and The Warren & Trumbull Railroad Company, an Ohio corporation; and the outstanding interests of Phoenix Logistics, Ltd. (the "Acquired Entities");

WHEREAS, Summit View and the Acquired Entities (together, the "Subject Companies") are engaged in the business of operating short line railroads (the "Business");

WHEREAS, prior to the Closing, the Subject Companies will transfer the Excluded Assets to the Seller or a designee thereof;

WHEREAS, Summit View owns all of the issued and outstanding shares of or membership interests in Byesville Scenic Trails, LLC and Air Partners N155A Company (the "Excluded Entities");

WHEREAS, prior to the Closing, Summit View will transfer ownership of the Excluded Entities to the Seller or a designee thereof; and

WHEREAS, the Buyer desires to purchase from the Seller, and the Seller desires to sell to the Buyer, all of the issued and outstanding shares of Summit View (but excluding all of the issued and outstanding shares of or membership interest in the Excluded Entities), all in accordance with and subject to the terms and conditions set forth in this Agreement;

WHEREAS, the Buyer and the Seller and Summit View have entered into that certain Stock Purchase Agreement, dated as of August 4, 2008 (the "Original Stock Purchase Agreement"), to record and confirm the obligations undertaken by them with respect and relating to the acquisition of all issued and outstanding shares of Summit View (but excluding all of the

issued and outstanding shares of or membership interest in the Excluded Entities), which are owned by the Seller; and

WHEREAS, the Purchaser and Sellers and Summit View desire to amend and restate, in its entirety, the Original Stock Purchase Agreement

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

“AAR” shall mean the Association of American Railroads;

“Action” shall mean any claim, action, suit, proceeding, labor dispute, investigation or audit by or before any court, tribunal or other Governmental Entity or arbitral body;

“Affiliate” shall mean any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another Person with the term “control” meaning, for this purpose, the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities or partnership, membership or other ownership interests, or by contract or otherwise;

“Acquired Entities” — See Recitals hereto;

“Agreement” — See Preamble hereto;

“Balance Sheet” shall mean the consolidated balance sheet of Summit View as of August 31, 2008 as set forth in Section 1.1(a) of the Disclosure Schedule;

“Basket Amount” — See Section 7.2(a)(v),

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York, New York, are closed generally,

“Business” — See Recitals hereto,

“Buyer” — See Preamble hereto,

“Buyer Indemnitors” — See Section 7.2(a);

“Buyer Material Adverse Effect” — See Section 4.1;

“Closing” — See Section 2.2;

“Closing Date” — See Section 2.2;

"Closing Payment Amount" — See Section 2.1(c),

"Closing Working Capital Report" — See Section 2.3(a);

"Closing Working Capital Statement" — See Section 2.3(a);

"COBRA" — See Section 3.18(i);

"Code" shall mean the Internal Revenue Code of 1986, as amended;

"Company Marks" — See Section 5.5;

"Confidential Information" shall include information, both written and oral, relating to trade secrets, and confidential and proprietary information relating to technical data, products, services, finances, business plans, marketing plans, legal affairs, suppliers, customers, prospects, opportunities, contracts, assets and other information that has commercial value, but shall not include information which (i) can be demonstrated in writing was already known by the recipient when received; (ii) is or after the date of this Agreement becomes obtainable from other sources other than pursuant to a violation of Law or breach of any Contract; (iii) is required to be disclosed to a Governmental Entity; (iv) can be demonstrated in writing that it was independently developed by the receiving Person; (v) is required to be disclosed by Law or pursuant to the rules of any securities exchange having jurisdiction over the disclosing Person; or (vi) is disclosed pursuant to a written waiver from the non-disclosing Person of the confidentiality requirements of Section 12.14;

"Contracts" shall mean all contracts and agreements, including but not limited to, Leases, Equipment and Machinery leases, indentures, mortgages, instruments, partnership or joint venture agreements, guaranties, license agreements, maintenance contracts, service contracts, employment, commission and consulting agreements, collective bargaining agreements, suretyship contracts, letters of credit, reimbursement agreements, distribution agreements, contracts or commitments limiting or restraining the Subject Companies from engaging or competing in any lines of business or with any Person, documents granting the power of attorney with respect to the affairs of the Subject Companies, options to purchase any assets or property rights, truckage rights agreements, haulage agreements, interchange agreements, joint facility agreements, switching agreements, marketing agreements, rate and allowance agreements, division agreements, and other similar arrangements, undertakings, commitments or understandings, including any renewal or amendment thereto;

"Employees" shall mean all employees of the Subject Companies that are employed by the Subject Companies following the Closing;

"Environmental Claim" means any claim, action, demand, or notice by or on behalf of, any Governmental Entity or Person alleging liability or potential liability under, or a violation of, any Environmental Law, or liability or potential liability arising out of the Release or presence of or exposure to any Materials of Environmental Concern;

"Environmental Laws" shall mean any and all Laws regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human

health, or natural resource damages, including Laws relating to the use, handling, generation, transportation, presence or Release of, or exposure to, Materials of Environmental Concern;

"Environmental Permits" shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization pursuant to or required under any Environmental Law;

"Environmental Report" shall mean any report, study, assessment, audit or other similar document that addresses any environmental or health issue, including any issue of actual or potential noncompliance with, actual or potential liability under or cost arising out of, or actual or potential impact on business in connection with, any Environmental Law or any proposed or anticipated change in or addition to Environmental Law, that may affect any of the Subject Companies;

"Equipment and Machinery" shall mean all the material equipment, machinery, furniture, fixtures and improvements, tooling, spare parts, supplies and vehicles (including all locomotives, cars, tractors, trailers, vans and all other transportation rolling stock) owned, leased or used (except third-party locomotives and rolling stock used pursuant to AAR interchange rules) by the Subject Companies;

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder;

"ERISA Affiliate" — See Section 3.18(b);

"Escrow Agent" — See Section 2.1(d),

"Escrow Agreement" — See Section 2.1(d);

"Escrow Fund" — See Section 2.1(d);

"Excluded Assets" shall mean those assets of the Subject Companies set forth on Section 1.1(b) of the Disclosure Schedule

"Excluded Entities" — See Recitals hereto,

"Excluded Liabilities" — See Section 2.7,

"Existing Policies" — See Section 3.20,

"FELA Claims" shall mean claims made under the Federal Employers Liability Act, as amended from time to time. A FELA Claim shall be considered "made" upon the earliest to occur of the following: (i) the claimant's employer has received or prepared a written report (including, in the case of an alleged occupational injury, a questionnaire) of the claim or of the incident from which the claim arises, or (ii) the claimant's employer has received written notice of the claim from the claimant or the claimant's attorney; or (iii) an action, claim or suit asserting the claim has been filed and properly served on the claimant's employer. For the purposes of this definition (i) the term "written report" shall include reports which are electronically prepared

or transmitted and (ii) the term "employer" shall include the employer currently responsible under the Federal Employers Liability Act for the claim or cause of action being asserted and such employer's attorney;

"Financial Statements" — See Section 3.7;

"FRA" shall mean the U.S. Federal Railroad Administration,

"GAAP" shall mean U.S. generally accepted accounting principles as in effect from time to time;

"Governmental Entity" shall mean any national, federal, state, provincial, local or international governmental or public body, court, agency or regulatory authority or commission, or other governmental authority or instrumentality;

"Governmental Order" shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity;

"Holdback Amount" — See Section 2.1(d),

"Independent Accounting Firm" — See Section 2.3(a);



"Indemnification Escrow Amount" — See Section 2.1(d);

“Indemnified Party” — See Section 7.1,

“Indemnifying Party” — See Section 7.1;

“Intellectual Property” shall mean all of the following owned or licensed by the Subject Companies, as licensee or licensor, or used exclusively in the Subject Companies’ business. (i) registered and material unregistered trademarks and service marks and trade names, and all goodwill associated therewith; (ii) patents, patentable inventions and computer programs (including password unprotected interpretive code or source code); (iii) trade secrets; (iv) registered and material unregistered copyrights in all works, including software programs; (v) domain names; (vi) all rights in mask works; (vii) all computer software owned by the Subject Companies; (viii) all rights of the Subject Companies under software licenses; and (ix) all copies of software generally available for purchase by the public pursuant to shrink-wrap licenses in the possession or control of the Subject Companies;

“IP Agreements” shall mean (a) licenses of Intellectual Property by any Subject Company to any third-party, (b) licenses of Intellectual Property by any third-party to any Subject Company, (c) agreements between any Subject Company and any third-party relating to the development or use of Intellectual Property, the development or transmission of data, or the use, modification, framing, linking, advertisement, or other practices with respect to Internet web sites, and (d) consents, settlements, decrees, orders, injunctions, judgments or rulings governing the use, validity or enforceability of the Intellectual Property;

“Law” shall mean any law, statute, ordinance, rule (including common law), regulation, order, writ, judgment, injunction, settlement agreement, guideline, code, decree or other legally enforceable requirement of any Governmental Entity, and includes rules and regulations of any regulatory or self-regulatory authority;

“Leased Real Property” — See Section 3.12(a);

“Lease” and “Leases” — See Section 3.12(a),

“Licensed Intellectual Property” shall mean Intellectual Property licensed to the Seller or any of its Subsidiaries pursuant to the IP Agreements,

“Licenses and Permits” — See Section 3.14;

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien (statutory or other), deed of trust, conditional sale agreement, claim, charge, lease, license, easement, restrictive covenant, limitation, restriction, assessment or defect in title that is not a Permitted Lien;

“Listed Intellectual Property” — See Section 3.13(a);

“Losses” — See Section 7.2(a),

“Material Contracts” — See Section 3.17(a)(xvi);

"Materials of Environmental Concern" shall mean any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, hazardous substances, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, molds, pollutants, contaminants, radioactivity and any other materials, substances or wastes of any kind, regulated pursuant to, or that could give rise to, liability under any Environmental Law;

"Material Adverse Effect" — See Section 3.2(a);

"Multiemployer Plans" — See Section 3.18(a);

"Net Working Capital" — See Section 2.5,

"Non-Compete Person" — See Section 5.10;

"Options" — See Section 3.12(d);

"Original Stock Purchase Agreement" — See Recitals hereto;

"Owned Intellectual Property" shall mean Intellectual Property owned by any Subject Company,

"Owned Real Property" — See Section 3.12(a);

"Panhandle Agreement" shall mean the Operating Agreement, dated as of May 17, 2007 between the State of Ohio, the Ohio Rail Development Commission and the Columbus & Ohio River Rail Road Company;

"Panhandle Line" shall mean the Rail Property as defined in the Panhandle Agreement;

"Pension Plan" — See Section 3.18(c),

"Permitted Liens" shall mean. (i) Liens for Taxes not yet due and payable; (ii) Liens imposed by Law and incurred in the ordinary course of business for obligations not yet due to carriers, warehousemen, laborers, materialmen and the like, it being understood that such Liens do not include Liens arising under any applicable Environmental Law; and (iii) Liens in respect of pledges or deposits under workers' compensation Laws;

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or Governmental Entity,

"Personal Property" means all furniture, fixtures, Equipment and Machinery and other items of tangible personal property;

"Plans" — See Section 3.18(a);

"Post-Closing Litigation" shall mean any Actions involving the Subject Companies relating to incidents that occur on or after the Closing other than a Tax Claim;

"Post-Signing Returns" — See Section 5.1(b);

"Pre-Closing Tax Period" shall mean any taxable period (or portion of a taxable period) ending on or before the Closing Date;

"Purchase Price" — See Section 2.1(b);

"Rail Facilities" — See Section 3.27;

"Railroad Assets" shall mean all assets, properties and rights (including the Rail Facilities), real and personal, of any of the Subject Companies,

"Real Property" — See Section 3.12(e);

"Regulations" shall mean the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes,

"Release" shall mean disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the environment;

"Retained Employees" shall mean the employees of the Subject Companies who shall become employees of the Seller or his Affiliates after the Closing whose names are set forth on Section 1.1(c) of the Disclosure Schedule.

"Securities Act" shall mean the United States Securities Act of 1933, as amended, and all rules and regulations of the United States Securities and Exchange Commission promulgated thereunder,

"Seller" — See Preamble hereto;

"Seller Indemnitees" — See Section 7.3;

"Severance and Bonus Payments" shall mean each Severance and Bonus Payment to be paid by a Subject Company to an employee, as described on Schedule A attached hereto.

"Specified Persons" — See Section 3.20,

"STB" — See Section 3.4;

"Subject Companies" — See Recitals hereto;

"Subsidiary" shall mean, as to any Person, any Person of which (i) at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions or (ii) the power to direct or cause the direction of the management and policies of such Person is directly

or indirectly owned or controlled by such Person or by one or more of its respective Subsidiaries or by such Person and any one or more of its respective Subsidiaries;

"Summit View" – See Preamble hereto;

"Tax Claim" — See Section 11.3(a);

"Tax Return" shall mean any report, return, declaration, statement, information return, filing, election, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied in connection with Taxes;

"Taxes" shall mean all United States federal, state, local and foreign taxes, including, without limitation, net income, gross income, gross receipts, production, excise, employment, sales, use, transfer, ad valorem, profits, license, capital stock, capital gains, franchise, severance, stamp, withholding, Social Security, railroad retirement, employment, unemployment, disability, worker's compensation, payroll, utility, windfall profits, personal property, real property, intangible property, registration, alternative or add-on minimum, estimated and other taxes, customs, duties, governmental fees or like charges of any kind whatsoever, including any interest, penalties, fines, related liabilities or additions thereto, and "Tax" shall mean any one of them;

"Third-Party Claim" — See Section 7.4(a);

ARTICLE 2. PURCHASE AND SALE OF SHARES OF SUMMIT VIEW

SECTION 2.1 Purchase Price. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of the Seller set forth below, on the Closing Date:

(a) The Buyer shall purchase from the Seller and the Seller shall sell to the Buyer all of the issued and outstanding shares of Summit View, free and clear of all Liens;

(b) The aggregate purchase price for the shares being sold by the Seller shall be [REDACTED] less Indebtedness as of the Closing, which aggregate amount shall be subject to adjustment after the Closing in the manner set forth in Sections 2.4 and 2.6 below (the "Purchase Price").

(c) Such purchase and sale shall be effected on the Closing Date by the Seller delivering to the Buyer such assignments and other instruments and documents as shall be effective to vest in the Buyer, on the Closing Date, good and marketable title to the Common Stock of Summit View, subject to no Liens other than such as may be created by or on behalf of the Buyer, in exchange for delivery by the Buyer to the Seller of the Purchase Price less the Indemnification Escrow Amount (the "Closing Payment Amount") Payment of the Closing Payment Amount shall be made by wire transfer of immediately available funds to such account as the Seller shall designate in writing to the Buyer at least three days prior to the Closing;

(d) (i) a portion of the Purchase Price equal to [REDACTED] (the "Indemnification Escrow Amount") shall be deposited with a bank (the "Escrow Agent"), pursuant to the terms of the Escrow Agreement among the parties hereto and the Escrow Agent (the "Escrow Agreement") substantially in the form attached hereto as Schedule B, which will be available until the [REDACTED] of the Closing Date for the purposes of securing payment of any post closing adjustments to the Purchase Price pursuant to Sections 2.1 and 2.6 and or indemnity obligations pursuant to Section 7.5 (the "Escrow Fund") and the Seller shall be entitled to, and responsible for the payment of any Taxes imposed on, interest or other income attributable to investments of amounts in the Escrow Fund, and (ii) a portion of the Purchase Price equal to [REDACTED] (the "Holdback Amount") shall be deposited with the Escrow Agent pursuant to the terms of the Escrow Agreement, which shall be retained by the Escrow Agent and released by the Escrow Agent to the Seller or the Buyer, as the case may be, according to the terms of the Escrow Agreement; and

(e) The Buyer shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amount as the Buyer is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable Tax Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for purposes of this Agreement as having been paid to the Seller.

SECTION 2.2 Closing. Subject to the satisfaction or waiver of the conditions set forth in Articles 8 and 9 hereof, the closing (the "Closing") for the consummation of the transactions contemplated by this Agreement shall take place at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022 at 10:00 a.m. on the fifth Business Day following the satisfaction or waiver of the conditions set forth in Articles 8 and 9, or at such other place and time as may be mutually agreed to by the parties hereto (the "Closing Date")

SECTION 2.3 Post-Closing Determination. (a) Within 60 calendar days after the Closing Date, the Buyer shall deliver to the Seller a statement of the Net Working Capital (the "Closing Working Capital Statement"). During the preparation of the Closing Working Capital Statement by the Buyer and the period of any dispute with respect to the application of this Section 2.3, the Seller shall cooperate with the Buyer to the extent reasonably requested by the Buyer to prepare the Closing Working Capital Statement or to investigate the basis for any dispute. The Closing Working Capital Statement shall be examined by the Seller, and the Seller shall, not later than 30 calendar days after receipt of the Closing Working Capital Statement, render a report thereon (the "Closing Working Capital Report"). During the preparation of the Closing Working Capital Report and the period of any dispute with respect thereto, the Buyer shall provide the Seller with reasonable access during normal business hours to the books, records (including work papers, schedules, memoranda and other documents) and employees of the Subject Companies. The Closing Working Capital Report shall list those items, if any, from the Closing Working Capital Statement to which the Seller takes exception and explain the Seller's proposed adjustment. If the Seller fails to deliver to the Buyer a Closing Working Capital Report within 30 calendar days following receipt of the Closing Working Capital Statement, the Seller shall be deemed to have accepted the Closing Working Capital Statement for the purposes of any adjustment to the Purchase Price under Section 2.4 and 2.6. If the Buyer does not give the Seller notice, within 30 calendar days following receipt of the

Closing Working Capital Report, of objections to the Closing Working Capital Report, the Buyer shall be deemed to have accepted the determination of the Net Working Capital as determined by the Seller in the Closing Working Capital Report for the purposes of any adjustment to the Purchase Price under Section 2.4 and 2.6. If the Buyer gives the Seller notice of objections to the Closing Working Capital Report, and if in good faith the Seller and the Buyer are unable, within 15 calendar days after receipt by the Seller of the notice from the Buyer of such objections, to resolve the disputed exceptions, such disputed exceptions will be referred to Deloitte & Touche LLP or another firm of independent certified public accountants ("Independent Accounting Firm") mutually acceptable to the Seller and the Buyer. The Buyer and the Seller shall cooperate with the Independent Accounting Firm to the extent reasonably requested by the Independent Accounting Firm to prepare a written report. The Independent Accounting Firm shall, within 30 calendar days following its selection, deliver to the Seller and the Buyer a written report determining such disputed exceptions, and its determinations will be conclusive and binding upon the parties hereto for the purposes of any adjustment to the Purchase Price under Section 2.4 and 2.6. The fees and disbursements of the Independent Accounting Firm acting under this Section 2.3 shall be shared equally by the Buyer and the Seller.

(b) The Buyer agrees that following the Closing, it will not take any action, and the Seller agrees that prior to the Closing it will not take any action, with respect to the accounting, books, records, policies and procedures of any Subject Company that would obstruct or prevent the preparation of the Closing Working Capital Statement, the Closing Working Capital Report or the report of the Independent Accounting Firm as provided in this Section 2.3.

SECTION 2.4 Post-Closing Net-Working Capital Adjustment.

(a) If the Net Working Capital is less than [REDACTED] the Seller shall, within three calendar days following the final determination, pursuant to Section 2.3, of the Net Working Capital, and based upon such final determination, pay to the Buyer an amount equal to such deficiency.

(b) If the Net Working Capital is more than the [REDACTED] the Buyer shall, within three calendar days following the final determination, pursuant to Section 2.3, of the Net Working Capital, and based upon such final determination, pay to the Seller an amount equal to such excess.

(c) Any payment to the Buyer under this Section 2.4 shall be made by wire transfer of immediately available funds to such account as the Buyer shall designate in writing to the Seller. Any payment to the Seller under this Section 2.4 shall be made in the manner set forth in Section 2.1.

SECTION 2.5 Net Working Capital. For purposes of this Article 2, "Net Working Capital" means the amount equal to the current assets, less the current liabilities (excluding the current portion of long-term debt), of the Subject Companies (on a consolidated basis) each determined (i) as of the close of business on the day immediately preceding the Closing Date, and (ii) in accordance with GAAP in preparing the Subject Companies' consolidated net working capital as of August 31, 2008 as set forth on Section 2.5 of the

Disclosure Schedule and consistent with the accounting principles, procedures, policies and methods used in preparing the Financial Statements; provided that, for the avoidance of doubt, current liabilities shall include liabilities for Taxes of (i) the Subject Companies, including any Taxes imposed on the Subject Companies with respect to the Excluded Assets or the operations of the Excluded Entities or the transfer of the Excluded Entities or the Excluded Assets to another Subject Company or the Seller, and (ii) the Excluded Entities but only to the extent that the Taxes of an Excluded Entity are required to be reflected on a Tax Return of a Subject Company. For the avoidance of doubt, current liabilities shall not include any amounts owed or owing as Severance and Bonus Payments, which such payments the Seller agrees to make prior to the Closing Date.

SECTION 2.6 [Intentionally Omitted].

SECTION 2.7 Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, (i) any and all payables of the Subject Companies owed to the Seller or any of their Affiliates and (ii) any liability under or relating to any Plan as a result of the execution of this Agreement shareholder approval of this Agreement or the transactions contemplated by this Agreement, including any bonuses listed on Section 3.18(a) of the Disclosure Schedule (collectively, the "Excluded Liabilities"), shall not be liabilities of the Subject Companies at or after the Closing.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER AND SUMMIT VIEW.

The Seller and Summit View hereby jointly and severally represent and warrant to the Buyer, as of the date hereof and as of the Closing Date or, if a representation or warranty is made as of a specific date, as of such date, subject to such information as is disclosed in the Disclosure Schedule, as follows:

SECTION 3.1 The Seller. (a) Authority of the Seller. The Seller has the requisite authority to enter into this Agreement, to consummate the transactions contemplated hereby and to carry out his obligations hereunder. This Agreement has been duly executed and delivered by the Seller and, assuming the due authorization, execution and delivery of this Agreement by the Buyer, this Agreement constitutes the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratorium or other similar Laws now or hereafter in effect relating to or affecting creditors' rights generally and subject to the limitations imposed by general equitable principles (regardless whether such enforceability is considered in a proceeding at law or in equity. The failure of the spouse of the Seller to be a party or signatory to this Agreement shall not (i) prevent the Seller from performing the Seller's obligations and consummating the transactions contemplated hereunder or (ii) prevent this Agreement from constituting the legal, valid and binding obligation of the Seller in accordance with its terms.

(b) Ownership of Shares. The Seller owns of record all issued and outstanding shares of Summit View, beneficially and with good and valid title, free and clear of all Liens. Other than the shares of Summit View, the Seller owns no interest in the Subject

Companies. Upon consummation of the Closing, the Buyer will own good and valid title to all the interests in the Subject Companies. Other than this Agreement, the Seller is not bound by any Contract restricting its right to transfer the shares of Summit View.

SECTION 3.2 Corporate Organization, Authority and Qualification of the Subject Companies. (a) Each of the Subject Companies is a corporation, duly organized, validly existing and in good standing under the Laws of the state of Ohio and has all requisite power and authority to own, operate or lease the assets or properties now owned or leased by it, and to conduct its business as now conducted, and is duly licensed or qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the character of the properties and assets owned or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except that the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, either (i) [REDACTED]

[REDACTED] a "Material Adverse Effect"). All corporate actions taken by the Subject Companies have been duly authorized, and none of the Subject Companies have taken any action that in any respect conflicts with, constitutes a default under, or results in a violation of, any provision of its Certificate of Incorporation and By-Laws (or similar organizational documents).

(b) **Section 3.2(b)** of the Disclosure Schedule sets forth a true and complete list of the Subject Companies, listing for each Subject Company its name, type of entity, the jurisdiction and date of its incorporation or organization, its authorized capital stock, partnership capital or equivalent, the number and type of its issued and outstanding shares of capital stock, partnership interests or similar ownership interests and the current ownership of such shares, partnership interests or similar ownership interests. Copies of the Certificate of Incorporation and By-laws, and certificates of formation (or comparable organizational documents, as applicable) of the Subject Companies, with all amendments thereto to the date hereof, have been furnished to the Buyer or its representatives, and such copies are accurate and complete.

(c) Other than the Acquired Entities and the Excluded Entities, there are no other corporations, partnerships, joint ventures, associations or other entities in which Summit View owns, of record or beneficially, any direct or indirect equity interest or any right (contingent or otherwise) to acquire the same, except as set forth in **Section 3.2(c)** of the Disclosure Schedule. Other than the Acquired Entities and the Excluded Entities and except as set forth in **Section 3.2(c)** of the Disclosure Schedule, neither Summit View nor any Acquired Entity is a member of (nor is any part of the Business conducted through) any partnership nor is Summit View or any Acquired Entity a participant in any joint venture or similar arrangement.

SECTION 3.3 No Conflict or Violation, Authority and Validity (a) The execution, delivery and performance by the Seller and Summit View of this Agreement and the transactions contemplated hereby do not and will not (i) violate or conflict with any provision of the Certificate of Incorporation or By-laws (or comparable organizational documents, as applicable) of any of the Subject Companies, (ii) violate any order, judgment or decree of any

Governmental Entity applicable to any of the Subject Companies or any of their respective Railroad Assets or businesses, or (iii) except as set forth on Section 3.3(a) of the Disclosure Schedule, violate, conflict with or result in a breach of or constitute (with or without due notice or lapse of time or both) a default, require consent under, or give to others any rights of termination, amendment, suspension, revocation or cancellation of, or result in the creation or imposition of any Lien upon any of the Railroad Assets, properties or rights of any of the Subject Companies under any Contract to which any of the Subject Companies is a party or by which any of them are bound or to which any of their respective Railroad Assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to a right thereunder to require any payment to be made by any of the Subject Companies

(b) There is no pending Action or, to the knowledge of the Seller (after having conducted reasonable inquiry), threatened Action before any Governmental Entity by or against the Seller or any Subject Company relating to (i) the Seller's ownership of the shares of Summit View, (ii) the Subject Companies or (iii) any actual or potential bankruptcy or insolvency of the Seller or any Subject Company.

SECTION 3.4 Consents and Approvals. Except as set forth on Section 3.4 of the Disclosure Schedule, the execution, delivery and performance of this Agreement by the Seller or the consummation of the transactions contemplated hereby by the Seller do not and will not require any consent, waiver, approval, license, authorization or permit of, or order of, action by, filing with or notification to, any Governmental Entity or Person, except for any consents or waivers required to be obtained from the Surface Transportation Board (the "STB").

SECTION 3.5 Capital Stock and Related Matters. (a) The authorized capital stock of Summit View consists of 750 shares of common stock, having no par value per share, of which 100 shares are issued and outstanding. Summit View has no shares of common stock that are held as treasury stock. Summit View has no Subsidiaries other than the Acquired Entities and Excluded Entities;

(b) Section 3.5(b) of the Disclosure Schedule sets forth, for each Acquired Entity, (i) the authorized, issued and outstanding capital stock of each Acquired Entity, (ii) the names of the owners of the capital stock and (iii) the amount of capital stock held by each owner of capital stock; and

(c) All of the issued and outstanding capital stock of each Subject Company is owned, beneficially and of record, by the Seller or a Subject Company, free and clear of any Liens other than such as may be created by or on behalf of the Buyer, and has been duly authorized and validly issued and is fully paid, nonassessable and was not issued in violation of any preemptive rights, rights of first refusal or any similar rights. There are no outstanding obligations, warrants, options or other rights to subscribe for or purchase from any Subject Company, or other contracts or commitments providing for the issuance of or granting any Person the right to acquire shares of any class of capital stock of any Subject Company, or any securities or other instruments convertible into or exchangeable or exercisable for shares of any class of capital stock of any Subject Company, and no Subject Company is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of its capital stock. There are no proxies, voting agreements,

stockholder agreements or other agreements with respect to the voting or transfer of any shares of capital stock of any of the Subject Companies. At Closing, the Buyer shall have good and valid title to all of the capital stock of each Subject Company, free and clear of any Liens, and the Subject Companies shall have good and valid title to all of the capital stock, membership interests and partnership interests of their respective Subsidiaries, free and clear of any Liens, other than such as may be created by or on behalf of the Buyer.

SECTION 3.6 Indebtedness. Except as set forth on Section 3.6 of the Disclosure Schedule, none of the Subject Companies has any Indebtedness

SECTION 3.7 Financial Statements. The Seller has heretofore furnished to the Buyer copies of (a) the Balance Sheet, together with the related unaudited consolidated statements of income, capital and retained earnings and cash flows for the period ended August 31, 2008 and (b) the audited consolidated balance sheets, together with the related statements of income, capital and cash flows for the years ended December 31, 2005, December 31, 2006 and December 31, 2007 of Summit View and its Subsidiaries, together with the report thereon of GBQ Partners LLC (all the financial statements referred to in clauses (a) and (b) being hereinafter collectively referred to as the "Financial Statements") Except as set forth on Section 3.7 of the Disclosure Schedule, the Financial Statements (i) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except that the unaudited interim Financial Statements do not include footnotes) and (ii) present fairly the financial position, results of operations and changes in the financial position of the Subject Companies as of such dates and for the periods then ended (subject, in the case of the unaudited interim Financial Statements, to normal year-end audit adjustments consistent with prior periods). The Subject Companies have designed and maintain a system of internal controls over financial reporting sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and there are no significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting that would reasonably be expected to have a material adverse effect upon such Subject Company's ability to record, process, summarize and report financial information.

SECTION 3.8 Conduct in the Ordinary Course; Absence of Certain Changes, Events and Conditions.

(a) Except as set forth on Section 3.8(a) of the Disclosure Schedule, since December 31, 2007, the Subject Companies have not suffered any effects, changes, events or developments which have had or would reasonably be expected to have a Material Adverse Effect;

(b) Since December 31, 2007, the Subject Companies have (and, in the case of Section 3.8(b)(xx), the Excluded Entities) operated and conducted their respective businesses in the ordinary course of business consistent with past practice and, except as set forth on Section 3.8(b) of the Disclosure Schedule, have not:

(i) incurred any obligation, liability (whether absolute, accrued, contingent or otherwise) or Indebtedness in excess of [REDACTED] in the aggregate or involving in any case annual expenditures in excess of [REDACTED];

(ii) made any loan to, or guaranteed any Indebtedness of, or otherwise incurred any Indebtedness on behalf of, any Person;

(iii) written down or written up (or failed to write down or write up in accordance with GAAP consistent with past practice) the value of any inventories or receivables or revalued any of the Railroad Assets or rights other than in the ordinary course of business consistent with past practice and in accordance with GAAP,

(iv) amended, terminated, cancelled or compromised any material claims of the Seller (to the extent related to the Business) or any Subject Company or waived any other rights of substantial value to the Seller (to the extent related to the Business) or any Subject Company;

[REDACTED] sold transferred, leased, subleased, licensed or otherwise disposed of any Railroad Assets, real, personal or mixed (including leasehold interests and intangible property), other than the sale of assets in the ordinary course of business consistent with past practice and not in excess of [REDACTED]

(vi) failed to discharge or satisfy any Lien or pay or satisfy any obligation or liability (whether absolute, accrued, contingent or otherwise), other than liabilities being contested in good faith and for which adequate reserves have been provided;

(vii) mortgaged, pledged or subjected to any Lien any of their respective Railroad Assets or rights;

(viii) sold or transferred any of their respective assets or cancelled any debts or claims or waived any rights;

(ix) disposed of any Intellectual Property;

(x) (A) allowed any Permit or Environmental Permit that was issued to or relates to the Subject Company or otherwise relates to the Business to lapse or terminate or (B) failed to renew any insurance policy, Permit or Environmental Permit that is scheduled to terminate or expire within 45 calendar days of the Closing;

(xi) entered into any transaction material to their respective businesses or amended, modified or consented to the termination of any material Contract or any Subject Company's rights thereunder,

(xii) amended or restated the Certificate of Incorporation or By-Laws (or other organizational documents) of any Subject Company;

(xiii) granted any increase, or announced any increase, in the compensation or benefits of, or loaned or advanced any money or other property to, their

respective present or former directors, officers or employees, including any increase or change pursuant to any Plan, or established or increased or promised to increase any benefits under any Plan, in either case except as required by Law or any collective bargaining agreement;

(xiv) entered into any employment or severance agreement, arrangement or transaction with any of their respective present or former directors, officers, employees or stockholders (or with any relative, beneficiary, spouse or Affiliate of such Persons);

(xv) incurred any obligation or liability for the payment of severance benefits;

(xvi) declared, paid or set aside for payment any dividend or other distribution in respect of shares of their respective capital stock or other securities (whether in cash, securities or other property) to the holders of capital stock of any Subject Company or otherwise, or redeemed, purchased or otherwise acquired, directly or indirectly, any shares of their respective capital stock or other securities, or agreed to do so,

(xvii) terminated, discontinued, closed or disposed of any facility or other business operation or laid off any employees (other than layoffs of less than 50 employees in any six-month period in the ordinary course of business consistent with past practice) or implemented any early retirement, separation or program providing early retirement window benefits within the meaning of Section 1.401(a)(4) of the Regulations or announced or planned any such action or program for the future;

(xviii) established, adopted, entered into, amended or terminated any Plans, except to the extent that any such amendments are required by Law, are necessary to preserve the tax-qualified status of any Plan or do not result in an increase in benefits for their respective present or former directors, officers or employees;

(xix) granted, amended, modified, extended or terminated any operating agreement, trackage rights agreement, haulage agreement, power-run-through agreement, switching agreement, marketing agreement, joint facilities agreement or other agreement with carriers materially affecting the operations on, or marketing of traffic to, from or over, the Rail Facilities;

(xx) changed any financial or accounting policy or practice, made, changed or revoked any Tax election or method of Tax accounting, filed any amended Tax Return, agreed to an extension or waiver of the statute of limitations with respect to the assessment or determination of Taxes, surrendered any right to claim a Tax refund, entered into any closing agreement with respect to Taxes or settled or compromised any Tax liability;

(xxi) made any purchase, or issued any sales orders or otherwise agreed to make purchases involving exchanges in excess of [REDACTED] or additions to property, plant or equipment used in its operations other than ordinary repairs and maintenance,

(xxii) failed to maintain each Subject Company's plant, property and equipment in good repair and operating condition, ordinary wear and tear excepted;

(xxiii) suffered any casualty loss or damage with respect to any of the assets or properties which in the aggregate have a replacement cost of more than [REDACTED], whether or not such loss or damage shall have been covered by insurance,

(xxiv) granted any equity or equity-based awards; or

(xxv) entered into any agreement to take any action prohibited by clauses (i) through (xxv) or granted any options to purchase, rights of first refusal, rights of first offer or any other similar rights or commitments with respect to any of the actions specified in this Section 3.8).

SECTION 3.9 Tax Matters Except as set forth on Section 3.9 of the Disclosure Schedule, (i) all Tax Returns required by applicable Law to be filed by or with respect to a Subject Company or an Excluded Entity have been or will be timely filed, and the Subject Companies and the Excluded Entities have or will have timely paid all Taxes due and payable, whether or not shown as due on such Tax Returns; (ii) all such Tax Returns are true, correct and complete in all material respects; (iii) there are no outstanding agreements, waivers or arrangements extending the statutory period of limitation applicable to any claim for, or the period for the collection or assessment of, Taxes due from or with respect to a Subject Company or an Excluded Entity for any taxable period, (iv) there is no action, suit, proceeding, investigation, audit or claim now pending or, to the knowledge of the Seller, threatened or contemplated, against, or with respect to, any Subject Company or an Excluded Entity in respect of any Tax or assessment, or with respect to any Tax Return, nor is there any claim for additional Tax or assessment asserted by any Tax authority; (v) any liability of the Subject Companies and the Excluded Entities for Taxes that are not yet due and payable with respect to any Pre-Closing Tax Period have been provided for on the latest balance sheet included in the Financial Statements, (vi) none of the assets, properties or rights of the Subject Companies are "tax-exempt use property" within the meaning of Section 168(h) of the Code; (vii) none of the assets, properties or rights of the Subject Companies include any lease made pursuant to former Section 168(f)(8) of the Internal Revenue Code of 1954, (viii) there is no Lien affecting any of the assets, properties or rights of the Subject Companies that arose in connection with any failure or alleged failure to pay any Tax other than Permitted Liens; (ix) the Seller is not a "foreign person" within the meaning of Section 1445 of the Code; (x) none of the Subject Companies nor any of the Excluded Entities (A) has been a member of an affiliated group filing a consolidated, combined or unitary federal, state, local or foreign income Tax Return (other than a group the common parent of which is Summit View) or (B) has any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law) or as a transferee or successor, by contract or otherwise; (xi) all Taxes required to be withheld, collected or deposited by or with respect to the Subject Companies or Excluded Entities have been or will be timely withheld, collected or deposited, as the case may be, and, to the extent required, have been or will be paid to the relevant Tax authority; (xii) none of the Subject Companies is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnification agreement or similar contract or arrangement or any agreement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person; (xiii) no closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign Law) has been entered into by or with respect to any of the Subject Companies, (xiv) none of the Subject Companies has been either a "distributing

corporation" or a "controlled corporation" in a distribution in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable, (xv) none of the Subject Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) change in method of accounting for a taxable period ending on or prior to the Effective Time, (B) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law), (C) installment sale or open transaction disposition made on or prior to the Effective Time or (D) prepaid amount received on or prior to the Closing Date; (xvi) none of the Subject Companies or Excluded Entities has engaged in any transaction that has given rise to a disclosure obligation as a "listed transaction" under Section 6011 of the Code and the Treasury regulations promulgated thereunder (or any similar provision of state, local or foreign Law), (xvii) no written notice of a claim of pending investigation has been received from any state, local or foreign jurisdiction with which a Subject Company or Excluded Entity currently does not file Tax Returns, alleging that the Subject Company or Excluded Entity has a duty to file Tax Returns and pay Taxes or is otherwise subject to the taxing authority of such jurisdiction; (xviii) the Seller has provided correct and complete copies of (A) all material Tax Returns filed by the Subject Companies for Tax years ending in 2005 and thereafter and (B) all material ruling requests, private letter rulings, notices of proposed deficiencies, closing agreements, settlement agreements and similar documents sent to or received by a Subject Company relating to Taxes, and (xix) since its inception, Phoenix Logistics, Ltd has been treated as an entity that is disregarded as separate from its owner for U.S. federal income tax purposes (and, to the extent applicable, state and local income tax purposes).

SECTION 3.10 Absence of Undisclosed Liabilities Except as and to the extent set forth in the Balance Sheet or on Section 3.10 of the Disclosure Schedule, none of the Subject Companies has any Indebtedness or liabilities, except for liabilities as shall have been incurred or accrued in the ordinary course of business since March 31, 2008 and which, in the aggregate, are not material to the Subject Companies. Except as set forth on the Balance Sheet, none of the Subject Companies is directly or indirectly liable upon or with respect to (by discount, repurchase agreement or otherwise), or obliged in any other way to provide funds in respect of, or to guarantee or assume, any Indebtedness of any Person.

SECTION 3.11 Owned Real Property.

(a) Section 3.11(a) of the Disclosure Schedule sets forth a list, which is complete and accurate, of the real property (including the fee title holder and a general description of the uses for such real property) owned by the Subject Companies (the "Owned Real Property"). One of the Subject Companies has good and marketable title to the Owned Real Property and, except for Permitted Liens, the Owned Real Property is free and clear of any Liens

(b) None of the Seller or any Subject Company has knowledge of or received any written notice of, any pending or contemplated rezoning, eminent domain or condemnation proceeding affecting the Owned Real Property.

(c) One of the Subject Companies is in peaceful and undisturbed possession of each parcel of Real Property, and neither the Seller nor any Subject Company has received written notice of any uncured violation of any contractual or legal restrictions that preclude or restrict the ability to use the Real Property for the purposes for which it is currently being used. The Owned Real Property and the buildings are in good operating condition and repair and have been reasonably maintained consistent with standards generally followed in the railroad industry in the United States. Except as set forth on Section 3.11(c) of the Disclosure Schedule, none of the Subject Companies have leased any parcel or any portion of any parcel of Owned Real Property to any other Person and no other Person has any rights to the use, occupancy or enjoyment thereof pursuant to any lease, sublease, license, occupancy or other agreement to which any of the Subject Companies is a party, nor have any of the Subject Companies assigned their interest under any lease listed on Section 3.11(a) of the Disclosure Schedule to any third-party.

(d) Except as set forth on Section 3.11(d) of the Disclosure Schedule, neither the Seller nor any of the Subject Companies have received written notice that any of the improvements on the Real Property or any of the current uses and conditions thereof violate any applicable deed restrictions or other applicable covenants, restrictions, agreements, existing site plan approvals, zoning or subdivision regulations or urban redevelopment plans as modified by any duly issued variances

(e) To the knowledge of the Seller, all improvements on any Real Property are wholly within the lot or boundary limits of such Real Property and do not encroach on any adjoining premises and there are no encroachments on any Real Property or any easement or property right or benefit appurtenant thereto by any improvements located on any adjoining premises.

SECTION 3.12 Leased Real Properties, Sufficiency.

(a) Section 3.12(a) of the Disclosure Schedule sets forth a list of all leases, subleases, licenses and occupancy agreements, together with all amendments and supplements thereto (including the name of the lessor and lessee), with respect to all real properties in which any of the Subject Companies has a leasehold interest, whether as lessor or lessee (each, a "Lease" and collectively, the "Leases"; the property covered by Leases under which the Subject Company is a lessee is referred to herein as the "Leased Real Property").

(b) Each Lease is in full force and effect and no Lease has been modified or amended except pursuant to an amendment referred to on Section 3.12(a) of the Disclosure Schedule. None of the Subject Companies nor, to the knowledge of the Seller, any other party to a Lease has given to the other party written notice of, or has made a claim with respect to, any breach or default. None of the Subject Companies is in default under any Lease and, to the knowledge of the Seller, no other party to a Lease is in default. There are no events which with the passage of time or the giving of notice or both would constitute a default by any of the Subject Companies or, to the knowledge of the Seller, by any other party to such Lease

(c) The rental amount set forth in each lease of the Leased Real Property is the actual rental amount being paid, and except for lease amendments or rent side letters which

have been provided to the Buyer, there are no separate agreements or understandings with respect to the same

(d) Neither the Seller nor the Subject Companies have waived, or taken any action or failed to take any action which would nullify or void the full right to exercise, any unexpired option, right of first offer or right of first refusal contained in any such lease or sublease, including any such option or right pertaining to purchase, expansion, renewal, extension or relocation (collectively, "Options") contained in the leases pertaining to the Leased Real Property on the terms and conditions contained therein.

(e) The Owned Real Property and the Leased Real Property taken together represent all of the real property used in the Business (the "Real Property")

SECTION 3.13 Intellectual Property. (a) Section 3.13(a) of the Disclosure Schedule sets forth a complete and correct list of the Intellectual Property (the "Listed Intellectual Property") filed by, used or issued or registered to any of the Subject Companies in connection with their businesses. Each Subject Company owns or has a valid and enforceable license or otherwise has the right to use all Intellectual Property used in the Business as currently conducted and, to the knowledge of the Seller, such use does not violate or conflict with the rights of any third party. Except as set forth on Section 3.13(a) of the Disclosure Schedule, to the knowledge of the Seller, all Listed Intellectual Property is owned by one of the Subject Companies, free and clear of all Liens. There has not been communicated to the Seller the threat of any claim that the holder of such Listed Intellectual Property is in violation or infringement of any Intellectual Property right of any third-party, or challenging any of the Subject Companies' ownership or use of, or the validity or enforceability of, any of the Listed Intellectual Property.

(b) Section 3.13(b) of the Disclosure Schedule sets forth a complete list of all material licenses, sublicenses and other agreements in which any of the Subject Companies or any sublicensee of any of the Subject Companies has granted to any Person the right to use the Listed Intellectual Property. Except as set forth on Section 3.13(b) of the Disclosure Schedule, none of the Subject Companies is under any obligation to pay royalties or other payments in connection with any material license, sublicense or other agreement, nor is any Subject Company restricted from assigning its rights under any sublicense or agreement respecting the Listed Intellectual Property, nor will any of the Subject Companies otherwise be, as a result of the Seller's execution and delivery of this Agreement, in breach of any material license, sublicense or other agreement relating to the Listed Intellectual Property.

SECTION 3.14 Licenses and Permits. The Subject Companies hold all licenses, permits, variances, certifications, exemptions, franchises, authorizations and approvals (the "Licenses and Permits") of all Governmental Entities necessary to own, lease or operate their respective properties and to permit the continued lawful conduct of their businesses in the manner now conducted. The operations of the Subject Companies are being conducted in a manner that complies with the terms or conditions of the Licenses and Permits. The consummation of the transactions contemplated by this Agreement will not result in the cancellation, modification, termination or suspension of any License or Permit

SECTION 3.15 Compliance with Law The Seller (to the extent related to the Business) and each of the Subject Companies have complied with and are in compliance in all material respects with all Laws and are not in violation of any applicable Governmental Order, writ, or any statute, ordinance, rule or regulation of any Governmental Entity and the Seller and the Subject Companies have each conducted and continue to conduct the Business in accordance in all material respects with all Laws and Governmental Orders applicable to the Seller or any Subject Company or any of their properties or assets, including the Railroad Assets, or the Business

SECTION 3.16 Litigation Except as set forth on Section 3.16 of the Disclosure Schedule (which, with respect to each Action set forth therein, sets forth the parties, nature of the proceeding, date and method commenced, amount of charges or other relief sought and, if applicable, paid or granted), there are no Actions pending or, to the knowledge of the Seller, threatened, before any Governmental Entity or before any arbitrator of any nature, brought by or against the Seller (to the extent related to the Business) or any Subject Company, the assets, properties or rights of the Subject Companies or the transactions contemplated by this Agreement. Section 3.16 of the Disclosure Schedule sets forth a brief description of each Governmental Order applicable to the Seller (to the extent related to the Business) and any Subject Company or any of their properties or assets, including the Railroad Assets, or the Business, and no such Governmental Order has or has had a Material Adverse Effect or could affect the legality, validity or enforceability of this Agreement, any Transaction Services Agreement or the consummation of the transactions contemplated hereby or thereby Section 3.16 of the Disclosure Schedule contains, among others, (i) a complete and correct list of all FELA Claims involving the Subject Companies made prior to the date hereof and not discharged prior to the date hereof and (ii) a complete and correct list of all FRA reportable incidents involving the Subject Companies and any collisions involving third-parties that occurred between January 1, 2003 and the date hereof.

SECTION 3.17 Contracts.

(a) Section 3.17 of the Disclosure Schedule and Schedule A hereof sets forth a complete and correct list of all Contracts to which the Seller (to the extent related to the Business) or any of the Subject Companies is a party or by which its assets or properties are bound (as in effect on the date hereof):

(i) (A) involving annual payments to or by the Subject Companies in excess of [REDACTED], (B) that is likely to involve payment or consideration of more than [REDACTED] in the aggregate over the remaining term of such Contract or (C) that cannot be cancelled by the Seller or such Subject Company without penalty or further payment and without more than 30 days' notice,

(ii) relating to the employment of any Person or consulting or similar advisory or service arrangements;

(iii) that relate to broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing and advertising contracts,

(iv) that are management contracts with independent contractors or consultants (or similar arrangements) and which cannot be cancelled by the Seller or such Subject Company without penalty or further payment and without more than 30 days' notice;

(v) that are with any Governmental Entity;

(vi) that are collective bargaining agreements or other agreements with any labor union;

(vii) that are affiliate Contracts with any Subject Company on the one hand, and the Seller, the Excluded Entities or any Affiliate of the Seller (other than the Subject Companies) on the other hand,

(viii) evidencing Indebtedness,

(ix) that are mortgages, pledges, security agreements or that grant a Lien;

(x) that represent a power of attorney;

(xi) that contain a covenant not to compete or a "most favored nation" provision;

(xii) that are Equipment and Machinery Leases;

(xiii) that relate to the maintenance of any railroad property,

(xiv) that relate to railroad tariffs;

(xv) that provide for benefits under any Plan; or

(xvi) that are otherwise material in any respect to the Seller (to the extent related to the Business) or the Subject Companies, including without limitation operating, trackage rights, haulage, power-run-through, switching, interchange, marketing and/or joint facility agreements, whether or not made in the ordinary course of business, or the absence of which would have a Material Adverse Effect (the "Material Contracts").

(b) Each Material Contract (i) is valid and binding upon the Seller and the Subject Companies, as applicable, and, to the knowledge of the Sellers, the other parties thereto in accordance with its terms, is in full force and effect, and (ii) upon consummation of the transactions contemplated by this Agreement, except to the extent that any consents set forth in Section 3.4 of the Disclosure Schedule are not obtained, shall continue in full force and effect without penalty or adverse consequence. None of the Seller or the Subject Companies is in default or delinquent in performance, status or any other respect (claimed or actual) in connection with any Contract to which it is a party. To the knowledge of the Seller, no other party to any Contract is in default in respect thereof and none of the Seller or any Subject Company has received any notice of termination, cancellation, breach or default under any

Material Contract. The Seller and the Subject Companies have made available to the Buyer true and complete copies of all Material Contracts

(c) The parties to the Panhandle Agreement have performed their obligations thereunder and are not in default in respect thereof.

SECTION 3.18 Employee Plans. To the knowledge of the Seller:

(a) Section 3.18(a) of the Disclosure Schedule sets forth a true and complete list of all "employee benefit plans", as defined in Section 3(3) of ERISA, and all other employee benefit arrangements, programs, policies or practices, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, including those with respect to, without limitation, multiemployer plans within the meaning of Section 3(37) of ERISA ("Multiemployer Plans"), severance pay, sick leave, vacation pay, salary continuation for disability, retirement, deferred compensation, bonus, incentive, stock purchase, stock option, hospitalization, medical and dental insurance, cafeteria, life insurance, tuition reimbursement, scholarship, employment, change-in-control, fringe benefit, employee loan, or collective bargaining under which any employee, director or consultant or former employee, director or consultant of any of the Subject Companies has any present or future right to benefits and which is sponsored or maintained by the Seller or the Subject Companies or under which the Subject Companies has had or has any present or future liability (collectively referred to herein as the "Plans"). True, correct, current and complete copies of the following documents relating to the Plans, to the extent applicable, have been delivered or made available to the Buyer: (i) the plan document and its related trust document or other funding instrument, including any amendments thereto, (ii) any summary plan description and other written communications (or a description of any oral communications) by the Subject Companies to their employees or former employees concerning the extent of benefits provided under a Plan; (iii) the most recent determination letter, if applicable; and (iv) for the three most recent years, (A) the Form 5500 and Annual Return/Report of Employee Benefit Plan, including all related schedules, filed with respect to each Plan, (B) audited financial statements, (C) actuarial valuation reports and (D) attorney's response to an auditor's request for information relating to the Plans

(b) None of the Plans are Multiemployer Plans, and none of the Subject Companies or any trade or business (whether or not incorporated) which is or has ever been treated as a single employer with any of the Subject Companies under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") has incurred any liability or been obligated to contribute to a Multiemployer Plan.

(c) None of the Plans is a "single-employer plan", as defined in Section 4001(a)(15) of ERISA, that is subject to Title IV of ERISA ("Pension Plan").

(d) With respect to each Plan that is intended to qualify under Code Section 401(a) and is so qualified, each such Plan, and its related trust: (i) has been established and administered in accordance with its terms, and in compliance with the applicable provisions of ERISA, the Code and other applicable Laws, rules and regulations; (ii) has received a favorable

determination letter from the Internal Revenue Service that it is so qualified and that its trust is exempt from Tax under Section 501(a) of the Code, and no facts or set of circumstances exist that could reasonably be expected to cause such Plan and related trust not to qualify or be so exempt from tax, or to lose such qualification or exemption from tax; (iii) is not subject to any present intention to be materially amended, suspended or terminated, or otherwise modified to adversely change benefits (or the levels thereof) under any Plan at any time within the twelve months immediately following the date hereof; (iv) is not a split-dollar life insurance program or otherwise provides for loans to executive officers (within the meaning of The Sarbanes-Oxley Act of 2002); and (v) none of the Subject Companies has incurred any current or projected liability in respect of post-employment or post-retirement health, medical or life insurance benefits for current, former or retired employees of any of the Subject Companies, except as required to avoid an excise tax under Section 4980B of the Code or otherwise except as may be required pursuant to any other applicable Law.

(c) All contributions (including all employer contributions and employee contributions) required to have been made under the Plans (other than contributions required to have been made to any Multiemployer Plan by any Person other than the Subject Companies or any of their employees) or by Law to any funds or trusts established thereunder or in connection therewith have been made by the due date thereof (including any valid extension), and all such contributions for any period ending on or before the Closing Date which are not yet due will have been paid or accrued by the Closing Date. No event has occurred and no condition exists with respect to the Plans or any "employee benefit plan" as defined in Section 3(3) of ERISA that would subject the Subject Companies, either directly or by reason of their affiliation with any ERISA Affiliate, to any material tax, fine, lien, penalty or other liability imposed by ERISA, the Code or other applicable Laws, rules and regulations.

(f) There has been no violation of ERISA or the Code with respect to the filing of applicable documents, notices or reports (including, but not limited to, annual reports filed on Form 5500) regarding the Plans with the Department of Labor or the Internal Revenue Service, or the furnishing of such required documents to the participants or beneficiaries of the Plans. For each Plan with respect to which a Form 5500 has been filed, no material change has occurred with respect to the matters covered by the most recent Form since the date thereof.

(g) There are no (i) pending material Actions which have been asserted, instituted or threatened, against the Plans, the assets of any of the trusts under the Plans or the sponsor or the administrator of the Plans or against any fiduciary of the Plans with respect to the operation of the Plans (other than routine benefit claims) or (ii) facts or circumstances that exist that could give rise to any such Actions

(h) The Plans have been established and administered in all respects in accordance with their express terms, and in compliance with all provisions of ERISA and the Code and other applicable federal and state Laws and regulations, and no "party in interest" or "disqualified person" with respect to the Plans has engaged in a non-exempt "prohibited transaction", as defined in Section 4975 of the Code or Section 406 of ERISA, or taken any actions, or failed to take any actions, which could reasonably result in any material liability to any of the Subject Companies under ERISA or the Code.

(i) None of the Plans provide retiree health or life insurance benefits except as may be required by Section 4980B of the Code and Section 601 of ERISA and the regulations thereunder ("**COBRA**") (or any applicable state Law) or at the expense of the participant or the participant's beneficiary.

(j) No Plan exists that, as a result of the execution of this Agreement, shareholder approval of this Agreement or the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)), could result in: (i) severance pay or any increase in severance pay upon any termination of employment after the date of this Agreement, (ii) acceleration of the time of payment or vesting or any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Plans, (iii) limiting or restricting the right of the Subject Companies to merge, amend or terminate any of the Plans, (iv) causing the Subject Companies to record additional compensation expense on its income statement with respect to any outstanding stock option or other equity-based award or (v) payments under any of the Plans which would not be deductible under Section 280G of the Code.

(k) No Plan is maintained outside the jurisdiction of the United States, or covers any employee residing or working outside the United States.

SECTION 3.19 Insurance. Prior to the date hereof, the Seller has furnished to the Buyer a true, complete and accurate original or certified copy of each policy or other certificate of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance insuring the Subject Companies and their respective Railroad Assets and operations (the "**Existing Policies**"). All such policies (i) are in full force and effect, (ii) provide coverage for all risks incident to the business of the Subject Companies and their respective Railroad Assets and are in character and amount similar to that carried by Persons in similar businesses and subject to the same perils and hazards, (iii) have no outstanding premiums due thereunder that have not been paid and (iv) will continue to provide coverage to the Subject Companies after the Closing Date for any claims arising out of occurrences that took place prior to the Closing Date. None of the Subject Companies has received notice of cancellation of any such insurance. Each Subject Company is an additional named insured under the Existing Policies. Except as set forth on **Section 3.19** of the Disclosure Schedule, there is no claim by any of the Subject Companies pending under any of such policies. There has been no claim by any of the Subject Companies under any of such policies as to which coverage has been denied by the underwriters of such policies.

SECTION 3.20 Transactions with Directors, Officers and Affiliates. Except as set forth on **Section 3.20** of the Disclosure Schedule, none of the Subject Companies is a party to any Contract, agreement or arrangement with the Seller or any of the directors, executive officers or stockholders of any of the Subject Companies or any Affiliate or family member of any of the foregoing Persons ("**Specified Persons**") under which it: (a) leases any real or personal property (either to or from such Person); (b) licenses technology (either to or from such Person); (c) is obligated to purchase any tangible or intangible asset from or sell such asset to such Person, (d) purchases products or services from such Person; (e) pays or receives commissions, rebates or other payments; or (f) provides or receives any other material benefit.

SECTION 3.21 Labor Matters.

(a) Except as set forth on Section 3.21(a) of the Disclosure Schedule: (i) no Subject Company is a party to any outstanding employment agreements or contracts with officers or employees of any Subject Company that are not terminable at will; (ii) no Subject Company is a party to any agreement, policy or practice that requires it to pay termination or severance pay to salaried, nonexempt or hourly employees of any Subject Company (other than as required by Law); and (iii) [REDACTED]

(b) Except as set forth on Section 3.21(b) of the Disclosure Schedule: (i) to the knowledge of the Seller, the Subject Companies are in compliance in all material respects with all applicable Laws relating to employment and employment practices, wages, hours and terms and conditions of employment; (ii) there are no open notices pending under Section 6 of the Railway Labor Act; (iii) there are no disputes under existing collective bargaining agreements pending before a tribunal established pursuant to Section 3 of the Railway Labor Act or under labor protection conditions imposed by the Interstate Commerce Commission or the STB; (iv) there is no labor strike, material slowdown or material work stoppage or lockout pending or, to the knowledge of the Seller, threatened against or affecting any Subject Company; and (v) there is no representation dispute pending or, to the knowledge of the Seller, threatened before the National Mediation Board and no question concerning representation exists relating to the employees of any Subject Company

SECTION 3.22 Environmental Matters.

(a) Except as set forth on Section 3.22(a) of the Disclosure Schedule:

(i) each of the Subject Companies is in compliance in all material respects with all applicable Environmental Laws and has not violated in any material respect any such Laws, and possesses and complies in all material respects with all Environmental Permits required under such Laws to operate as it has operated and currently operates, and has not violated in any material respect any such Environmental Permits;

(ii) none of the Subject Companies is aware of any past, present, or reasonably anticipated future events, circumstances, practices, plans, or legal requirements that could reasonably be expected to prevent any of the Subject Companies from (or materially increase the burden on any of the Subject Companies of) complying with applicable Environmental Laws or obtaining, renewing or complying with all Environmental Permits required under such Laws;

(iii) there are and have been no Releases of Materials of Environmental Concern, or any other conditions created by any Subject Company or at any Owned Real Property, Leased Real Property, Rail Facilities, Equipment and Machinery or any other property currently, or during the period of its ownership, lease, operation or use thereof formerly, owned, leased, operated, or otherwise used by any of the Subject Companies, or at any other location

(including without limitation any location used for the storage, disposal, recycling or other handling of any Materials of Environmental Concern), that require any investigation, cleanup, removal, remediation or remedial responses or corrective actions pursuant to Environmental Law, or that have or could reasonably be expected to give rise to material liability of any of the Subject Companies under any Environmental Law, or that have resulted or could reasonably be expected to result in material costs to any of the Subject Companies arising out of any Environmental Law,

(iv) (A) none of the Subject Companies has received any Environmental Claim that has not been fully and finally resolved without any pending, ongoing or future costs, obligations or liabilities; and (B) none of the Subject Companies is aware, after reasonable inquiry, of (I) any pending or threatened Environmental Claim, or of any circumstances, conditions or events that could reasonably be expected to result in an Environmental Claim, against any of the Subject Companies, or (II) any pending or threatened claim against any Person other than any of the Subject Companies that could reasonably be expected to have a Material Adverse Effect,

(v) none of the Subject Companies has entered into any consent decree or other agreement with any Governmental Entity under any Environmental Law, and none of the Subject Companies is subject to any judgment, decree, order or similar requirement relating to compliance with any Environmental Law or to Materials of Environmental Concern;

(vi) without limiting the generality of any of the foregoing, to the knowledge of the Seller, no property owned, leased, operated or otherwise used by any of the Subject Companies (including the Owned Real Property and Leased Real Property) as of the date hereof: (A) is or has been used for the disposal of Materials of Environmental Concern in a manner that would require an Environmental Permit (under Environmental Law applicable as of the date hereof); (B) contains or has contained any underground storage tank; (C) contains asbestos or asbestos-containing building materials, at levels subject to regulation under any applicable Environmental Laws, (D) contains any polychlorinated biphenyls, in equipment or otherwise, at levels subject to regulation under any applicable Environmental Laws; or (E) contains mold of the type and in quantities that could reasonably be expected to be harmful to human health or safety; and

(vii) to the knowledge of the Seller. (A) none of the Subject Companies has assumed or retained, by contract or operation of Law, any obligation under any Environmental Law or concerning any Materials of Environmental Concern that could reasonably be expected to be material to any of the Subject Companies and (B) each of the foregoing representations and warranties also applies to any Person for which any of the Subject Companies has assumed or retained responsibility, whether by contract, operation of Law, or otherwise.

(b) The Seller has provided to the Buyer or its representatives true and complete copies of all Environmental Reports that are in the possession or control of the Subject Companies, each of which is identified in Section 3.22(b) of the Disclosure Schedule.

SECTION 3.23 Railroad Assets. (a) One or more of the Subject Companies owns, leases or has the legal right to use all the Railroad Assets, including the Owned Intellectual Property, the Licensed Intellectual Property, the IP Agreements, the Real Property and the tangible personal property, used or intended to be used in the conduct of the Business or otherwise owned, leased or used by any Subject Company, and, with respect to contract rights, is a party to and enjoys the right to the benefits of all contracts, agreements and other arrangements used or intended to be used by the Seller (as such relate to the Business) or any Subject Company or in, or relating to, the conduct of the Business, all of which properties, assets and rights constitute Railroad Assets except for the Excluded Entities and their accompanying assets, properties and liabilities. Each of the Seller or the Subject Companies, as the case may be, has good and marketable title to, or, in the case of leased Railroad Assets, valid and subsisting leasehold interests in, all the Railroad Assets, free and clear of all Liens other than the Permitted Liens as set forth in Section 3.23 of the Disclosure Schedule.

(b) The Railroad Assets, including the Owned Intellectual Property, the Licensed Intellectual Property, the IP Agreements, the Real Property and the tangible personal property, constitute all the properties, assets and rights forming a part of, used, held or intended to be used in, and all such properties, assets and rights as are necessary in the conduct of, the Business. At all times since December 31, 2006, the Seller has caused the Railroad Assets, including the Owned Intellectual Property, the Licensed Intellectual Property, the IP Agreements, the Real Property and the tangible personal property, to be maintained in accordance with good business practice, and all the Railroad Assets are in good operating condition and repair and are suitable for the purposes for which they are used and intended to be used.

(c) The Seller has the complete and unrestricted power and unqualified right to sell, assign, transfer, convey and deliver the Railroad Assets to the Buyer without penalty or other adverse consequences. Following the consummation of the transactions contemplated by this Agreement and the execution of the instruments of transfer contemplated by this Agreement, the Buyer will own, with good, valid and marketable title, or lease, under valid and subsisting leases, or otherwise acquire the interests of the Seller in the Railroad Assets, free and clear of any Liens, other than Permitted Liens, and without incurring any penalty or other adverse consequence, including any increase in rentals, royalties, or license or other fees imposed as a result of, or arising from, the consummation of the transactions contemplated by this Agreement.

SECTION 3 24 Relations with Principal Customers. Section 3.24 of the Disclosure Schedule lists for the fiscal year ended December 31, 2007, [REDACTED]

SECTION 3 25 Assets of Excluded Entities. Section 3.25 of the Disclosure Schedule sets forth a list of all assets, properties, and rights, real and personal, of each of the Excluded Entities.

SECTION 3.26 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or the Subject Companies.

SECTION 3.27 Rail Facilities and Related Contracts Except as set forth in Section 3.27(b) of the Disclosure Schedule, the Subject Companies hold valid and sufficient indefeasible property interests and indefeasible operating rights in and to the rail line depicted on the maps referenced in Section 3.27(a) of the Disclosure Schedule, and to the adjacent yards, spur tracks and other rail facility appurtenances thereto (collectively, the "Rail Facilities") to permit the Subject Companies to conduct rail freight operations on and over the Rail Facilities as such operations are conducted by the Subject Companies on the date of this Agreement. The individual parcels of land that constitute the Rail Facilities of each line are contiguous to each other, with no gaps or strips, from one end point of each line to the other end point of each such line. Furthermore, the Railroad Assets, as of the date of this Agreement, comprise the assets necessary, in all material respects, to operate the Business as currently operated and consistent with past practice. None of the Subject Companies is a party to any contract or subject to any order that would deprive any Subject Company of the ability to operate substantially as the Subject Companies operate over the Rail Facilities on the date of this Agreement, or that would deprive the Subject Companies of the ability to (i) serve directly all customers that may be served directly by them on the date of this Agreement or (ii) interchange with the carriers listed on Section 3.27 of the Disclosure Schedule at or near the locations listed on Section 3.27 of the Disclosure Schedule

SECTION 3.28 Condition of Lines, Personal Property. (a) Except as set forth on Section 3.28 of the Disclosure Schedule, the physical condition of the Rail Facilities is in good repair and sufficient, in all material respects, to operate the Business as currently operated on the date hereof. All Personal Property of the Subject Companies necessary to operate the Business as it is currently conducted is in good repair and working order as of the date hereof and is suitable for the purposes for which it is being used (taking into account ordinary wear and tear and the need for ordinary, routine maintenance and repairs). Each of the Subject Companies has or will have on the Closing Date good and valid title on, free and clear of all Liens (except for Permitted Liens), or valid leasehold interests or rights under contract to use, all Personal Property owned, leased or used in the Business. Section 3.28 of the Disclosure Schedule contains a true and correct list of each piece of Equipment and Machinery with a replacement cost of more than [REDACTED] used by the Subject Companies in the conduct of their businesses and designates which of such Equipment and Machinery is owned and which is leased.

(b) All improvements on the Real Property constructed by or on behalf of the Seller or the Subject Companies or, to the knowledge of the Seller, constructed by or on behalf of any other Person, were constructed in substantial compliance with all applicable Laws (including any building, planning, highway or zoning Laws or local ordinances) affecting such Real Property.

SECTION 3.29 Certain Business Practices. None of the Seller or any Subject Company or any of their respective directors, officers, agents, representatives or

employees (in their capacity as directors, officers, agents, representatives or employees) has: (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity in respect of the Business, (b) directly or indirectly, paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent, or other party acting on behalf of or under the auspices of a governmental official or Governmental Entity, in the United States or any other country, which is in any manner illegal under any Law of the United States or any other country having jurisdiction; or (c) made any payment to any customer or supplier of the Seller or any Subject Company or any officer, director, partner, employee or agent of any such customer or supplier for an unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent, in respect of the Business.

SECTION 3.30 Interchange Commitments. Except as disclosed in Section 3.30 of the Disclosure Schedule, to the knowledge of the Seller, neither the Seller nor any Subject Company is a party to a Contract that limits the Subject Companies with respect to future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in a purchase price or rental, positive economic inducement or other means, or that otherwise constitutes an "interchange commitment" as defined in 49 C.F.R. 1180.4(g)(4)

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller as follows:

SECTION 4.1 Corporate Organization. The Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of its incorporation and has all requisite corporate power and authority to own its properties and assets and to conduct its business as now conducted and is duly licensed or qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of the properties and assets owned or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except where the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, either (i) have or reasonably be expected to have a Material Adverse Effect on the business, operations, assets or condition (financial or otherwise) of the Buyer or (ii) materially impair the ability of such Buyer to perform any of its obligations under this Agreement (either of such effects, a "Buyer Material Adverse Effect").

SECTION 4.2 Authorization and Validity. (i) The Buyer has the necessary power and authority to enter into this Agreement and any other agreements related thereto to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby. The execution and delivery by the Buyer of this Agreement and the performance by the Buyer of its obligations hereunder have been duly authorized by all necessary corporate action by the Board of Directors of the Buyer, and no other corporate proceedings on the part of the Buyer are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed and delivered by the Buyer and, assuming the due authorization, execution and delivery of this Agreement by the Seller, this Agreement constitutes the Buyer's valid and binding obligation enforceable against the Buyer in

accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to or affecting creditors' rights generally, including the effect of statutory and other Laws regarding fraudulent conveyances and preferential transfers and subject to the limitations imposed by general equitable principles (regardless whether such enforceability is considered in a proceeding at Law or in equity).

SECTION 4.3 **No Conflict or Violation.** The execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby do not and will not (i) violate or conflict with any provision of the Certificate of Incorporation or By-laws of the Buyer, (ii) violate any order, judgment or decree of any Governmental Entity applicable to the Buyer or (iii) violate, conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default, termination or right of termination under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Buyer is a party or by which it is bound or to which any of its properties or assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to a right thereunder to require any payment to be made by the Buyer, or result in the creation or imposition of any Lien upon any of the assets, properties or rights of the Buyer

SECTION 4.4 **Consents and Approvals.** Neither the execution and delivery of this Agreement by the Buyer nor the consummation of the transactions contemplated hereby by the Buyer require any consent, waiver, approval, license, authorization or permit of, or filing with or notification to, any Person, except for any consents or waivers required to be obtained from the STB.

SECTION 4.5 **Brokers.** No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer.

ARTICLE 5. COVENANTS OF THE SELLER

The Seller hereby covenants as follows:

SECTION 5.1 **Conduct of Business Before the Closing Date.** (a) Except as set forth on Section 5.1 of the Disclosure Schedule, without the prior written consent of the Buyer, between the date hereof and the Closing Date, the Seller shall not permit any of the Subject Companies (and in the case of Sections 5.1(a)(xiii) or (xiv), any of the Excluded Entities) to:

(i) make any material change in the conduct of the business of any Subject Company, including, but not limited to pricing and purchasing policies, or enter into any transaction other than in the ordinary course of business consistent with past practice;

(ii) fail to (A) pay any Subject Company's trade payables and other short-term liabilities as and when due in the ordinary course of business consistent with its historical payment practices, except to the extent the validity or amount of any such payables and

other liabilities is disputed in good faith by such Subject Company and (B) attempt to collect its receivables in the ordinary course of business consistent with its historical collection practices;

(iii) shorten or lengthen the customary payment cycles for any of their payables or receivables;

(iv) make any change in its Certificate of Incorporation and By-laws, partnership agreements, limited liability company agreements and certificates of formation (or comparable organizational documents, as applicable), issue any additional equity interests or grant any option, warrant or right to acquire any equity interests or issue any security convertible into or exchangeable for equity interests or alter in any way any of its outstanding equity interests or make any change in outstanding equity interests or the capitalization of any Subject Company, whether by reason of a reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, stock dividend or otherwise;

(v) make any sale, assignment, transfer, abandonment or other conveyance or disposition of the Railroad Assets or rights (including any Intellectual Property) of any of the Subject Companies or any material part thereof, except transactions pursuant to Contracts and dispositions of inventory or of worn-out or obsolete equipment for fair or reasonable value in the ordinary course of business consistent with past practice,

(vi) subject any of the assets, properties or rights of any of the Subject Companies, or any part thereof, to any Lien or suffer such to exist, other than (A) Permitted Liens and (B) such Liens as may arise in the ordinary course of business consistent with past practice by operation of Law and that will not, individually or in the aggregate, be or reasonably be expected to be material to any of the Subject Companies,

(vii) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of the equity interest of any of the Subject Companies or declare, set aside or pay any dividends or other distribution in respect of such equity interest of any of the Subject Companies;

(viii) acquire any assets, raw materials or properties, or enter into any other transaction, other than in the ordinary course of business consistent with past practice;

(ix) (A) establish, adopt, enter into, amend or terminate any Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Plan if it were in existence as of the date of this Agreement, except to the extent that any such amendments are required by Law, are necessary to preserve the tax-qualified status of any Plan or do not result in an increase in benefits for the present or former directors, officers or employees of any of the Subject Companies, (B) grant any increase in the compensation or fringe benefits of any present or former directors, consultants, officers or employees of any of the Subject Companies (including, without limitation, any such increase pursuant to any bonus, pension, profit-sharing or other plan or commitment), except in accordance with preexisting contractual provisions or for increases in salary or wages in the ordinary course of business consistent with past practice, (C) grant any severance or termination pay to any present or former director, officer or employee of any of the Subject Companies, (D) loan or advance money or other property to any present or

former directors, officers or employees of any of the Subject Companies; and (E) allow for the commencement of any new offering periods under any employee stock purchase plans,

(x) pay, lend or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement or arrangement with, any of their Affiliates;

(xi) take any other action which any of the Subject Companies reasonably expects would cause any of the representations and warranties made by the Seller or Summit View in this Agreement not to remain true and correct in any material respect;

(xii) make any change in any method of accounting or accounting principle, method, estimate or practice or write down the value of any inventory or write off as uncollectible any accounts receivable or any portion thereof;

(xiii) make, change or revoke any election or method of accounting with respect to Taxes, file any amended Tax Return or surrender any right to claim a Tax refund,

(xiv) enter into any closing or other agreement with respect to Taxes or settle or compromise any Tax liability or agree to an extension or waiver of the statute of limitations with respect to the assessment or determination of any Taxes;

(xv) enter into any plan of liquidation or dissolution or file a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(xvi) settle, release or forgive any claim or litigation or waive any right thereto;

(xvii) make, enter into, modify, amend in any material respect or terminate any Contract, bid or expenditure;

(xviii) amend, terminate or surrender any Lease.

(xix) create, incur, assume or suffer to exist any Indebtedness,

(xx) make any capital expenditure in excess of [REDACTED], or addition to property, plant or equipment used in its operations other than ordinary repairs and maintenance;

(xxi) lay off any employees;

(xxii) grant, amend, modify, extend or terminate any trackage rights agreement, haulage agreement, power-run-through agreement, operating agreement, switching agreement, interchange agreement, marketing agreement, joint facilities agreement or other agreement with carriers materially affecting the operations on, or marketing of traffic to, from or over, the Rail Facilities;

(xxiii) abandon or discontinue service over all or any portion of the Rail Facilities, or commence a regulatory proceeding to facilitate any such abandonment or discontinuance;

(xxiv) enter into any new line of business;

(xxv) enter into, materially amend or renew any agreement with a shipper or receiver for movement of traffic over the Rail Facilities;

(xxvi) enter into any agreement with a shipper or receiver that would cause or facilitate the diversion of a material amount of traffic from the Rail Facilities,

(xxvii) fail to maintain in full force and effect without material modification all existing policies or binders of insurance currently maintained in respect of each Subject Company;

(xxviii) fail to preserve the current relationships with the customers, suppliers and other Persons with which they have had significant business relationships, or

(xxix) enter into or cause or permit any Subject Company to enter into any agreement to take any action prohibited by clauses (i) through (xxviii).

(b) During the period from the date hereof to the Closing Date, the Subject Companies and the Excluded Entities shall. (i) prepare and timely file all Tax Returns ("Post-Signing Returns") required to be filed (taking into account any valid extensions obtained in the ordinary course of business) in a manner consistent with the past practice of the applicable Subject Company or Excluded Entity, (ii) timely pay all Taxes shown to be due and payable on such Post Signing Returns, and (iii) promptly notify the Buyer of any written notice of any suit, claim, action, investigation, audit or proceeding pending against or with respect to a Subject Company or Excluded Entity in respect of any material Tax matters (or any significant developments with respect to ongoing suits, claims, actions, investigations, audits or proceedings in respect of such material Tax matters).

(c) Except as set forth in Section 5.1(c) of the Disclosure Schedule, the Seller covenants and agrees that, between the date hereof and the time of the Closing, without the prior written consent of the Buyer, none of the Seller or any Subject Company will do any of the things specified in Section 3.8(b)

(d) Prior to the Closing, Seller shall cause the Subject Companies to transfer the Excluded Assets to Seller or a designee thereof

SECTION 5.2 Consents and Approvals (a) If applicable, the Buyer and the Seller shall, and the Seller shall cause the Subject Companies to, timely make any required filings with, and use reasonable efforts to obtain requisite consents and approvals of, any Governmental Entity (other than the STB for which the Buyer shall solely be responsible for making filings and obtaining the requisite consents and approvals) with respect to the transactions contemplated hereby (including a request for early termination of the waiting period thereunder), and shall thereafter promptly respond to all requests received from such agencies for

additional information or documentation, provided, that Buyer shall not be required to commit to or effect, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such of its or its Affiliates' assets or operations, and/or of the assets or operations of the Subject Companies, as is required to be sold, divested or disposed of, including entering into any agreement required to be entered into by any Governmental Entity in connection therewith, in order to obtain any required regulatory approval or to avoid the commencement of any Action seeking, and/or to avoid entry of, and/or to effect the dissolution of, any Governmental Order that would have the effect of materially delaying or prohibiting the consummation of the transactions contemplated hereby.

(b) As soon as practicable after the execution of the Agreement, but in no event later than 20 days thereafter (except with respect to the Panhandle Agreement for which consent shall be sought at the first opportunity allowed by the applicable Governmental Entity), the Seller shall, and shall cause the Subject Companies to, at the cost and expense of the Seller (except with respect to the Panhandle Agreement, which will be at the cost and expense of the Buyer), (i) use reasonable best efforts to obtain all other necessary consents, waivers, authorizations, orders and approvals of all Persons required in connection with the execution, delivery and performance by the Seller and Summit View of this Agreement and the consummation of the transactions contemplated hereby including without limitation any third party consents under any Material Contract, if any, and execution of estoppel certificates by lessors under any Leased Real Property for which consent to transfer is necessary, if any, and (ii) diligently assist and cooperate with the Buyer in preparing and filing all documents required to be submitted by the Buyer to any Governmental Entity, including the STB, in connection with such transactions and in obtaining any consents, waivers, authorizations, orders or approvals of Governmental Entities which may be required to be obtained by the Buyer in connection with such transactions (which assistance and cooperation shall include, without limitation, timely furnishing to the Buyer all information concerning the Seller and the Subject Companies that counsel to the Buyer reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, authorization or approval.

(c) The Buyer shall cooperate and use all reasonable efforts to assist the Seller in giving such notices and obtaining any consents and estoppel certificates; provided, however, that the Buyer shall have no obligation to give any guarantee or other consideration of any nature in connection with any such notice, consent or estoppel certificate or to consent to any change in the terms of any agreement or arrangement which the Buyer may deem adverse to the interests of the Buyer, the Subject Companies or the Business. The Seller shall keep Buyer reasonably informed as to the status of obtaining any consents and estoppel certificates.

(d) The Seller and the Buyer agree that, in the event that any consent, approval or authorization necessary or desirable to preserve for the Business or any Subject Company, any right or benefit under any License or Permit, Contract or other arrangement to which the Seller or any Subject Company is a party is not obtained prior to the Closing, the Seller will, subsequent to the Closing, cooperate with the Buyer or the Subject Companies in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, the Seller shall use its best efforts to provide the Buyer or such Subject Company, as the case may be, with the rights and benefits of the affected lease, license, contract, commitment or other agreement or

arrangement for the term of such lease, license, contract or other agreement or arrangement, and, if the Seller provides such rights and benefits, the Buyer or such Subject Company, as the case may be, shall assume the obligations and burdens thereunder.

SECTION 5.3 Access to Properties and Records. The Seller shall cause the Subject Companies to afford to the Buyer, and to the accountants, counsel, consultants and other representatives of the Buyer, access during normal business hours throughout the period prior to the Closing Date to all properties, books, Contracts, commitments, title reports relating to the Owned Real Property, title insurance policies currently in effect with respect to the Owned Real Property and files and records of the Subject Companies including access to such properties to conduct environmental assessments of any Owned Real Property or, subject to the rights of the landlord, any Leased Real Property, and, during such period, shall furnish promptly to the Buyer all other information concerning the Subject Companies and their respective properties and personnel as the Buyer may from time to time reasonably request; provided, however, that any such access shall be conducted at a reasonable time and in such a manner as not to interfere unreasonably with the operations of the business of the Subject Companies. Notwithstanding the foregoing, none of the Subject Companies shall be required to disclose any information to the Buyer or their authorized representatives if doing so would violate any Law to which such Subject Company is subject.

SECTION 5.4 Reasonable Best Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of the Seller or the Subject Companies, the Seller will use, and will cause the Subject Companies to use, their reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby

SECTION 5.5 Use of Intellectual Property. The Seller acknowledges that from and after the Closing, the names or related names, car marks or other marks, initials and logos listed on Section 5.5 of the Disclosure Schedule (all of such names, marks, initials and logos being the "Company Marks") shall be owned by one of the Subject Companies, that neither the Seller nor any of its Affiliates shall have any rights in the Company Marks and that neither the Seller nor any of its Affiliates will contest the ownership or validity of any rights of the Buyer or any Subject Company in or to the Company Marks. From and after the Closing, neither the Seller nor any of its Affiliates shall use any of the Owned Intellectual Property or any of the Licensed Intellectual Property.

SECTION 5.6 Intercompany Arrangements. (a) Prior to the Closing, the Seller shall cause any contract or arrangement that is disclosed (or should have been disclosed) in Section 3.17(a)(vii) of the Disclosure Schedule, other than those contracts or arrangements set forth in Section 5.6 of the Disclosure Schedule, to be terminated or otherwise amended to exclude the Company and any Subsidiaries as a party thereto.

(b) Immediately prior to the consummation of the Closing, the Seller shall contribute, or cause to be contributed, to the capital of the Subject Companies, the difference between (i) the intercompany Indebtedness owed by the Subject Companies to the Seller and its Affiliates (other than the Subject Companies) as of the Closing and (ii) the intercompany

Indebtedness owed by the Seller and its Affiliates (other than the Subject Companies) to the Subject Companies as of the Closing, and all such intercompany Indebtedness shall cease to exist and be of no further force or effect

SECTION 5.7 **Insurance.** The Seller shall not take any action or omit taking any action that would reasonably be expected to be adverse to the ability of the Subject Companies to have the benefit of the Existing Policies following the Closing. In addition, the Seller shall or shall cause the Subject Companies to notify the carriers under the Existing Policies of all matters of which the Seller has knowledge at or prior to Closing that would give rise to claims covered under the Existing Policies.

SECTION 5.8 **Risk of Loss.** The risk of loss or damage by fire or other casualty to any Owned Real Property or any Leased Real Property before delivery of the applicable deed or assignment is assumed by the Seller. In the event that any Owned Real Property or Leased Real Property shall suffer any fire or casualty or any injury, the Seller agrees to (i) repair the damage at its sole cost and expense before the date set for delivery of the deed or assignment, as applicable, hereunder, or (ii) make an appropriate reduction in the Purchase Price based on a reasonable approximation of the cost of such repair as agreed by the parties, or (iii) assign to the Buyer the proceeds of any insurances covering such fire, casualty or injury.

SECTION 5.9 **Resignation of Officers and Directors.** Effective immediately prior to Closing, the Seller shall cause the directors and officers of the Subject Companies listed on Schedule D to resign or shall remove them from such positions.

[REDACTED]

SECTION 5.11 **Notice of Developments.** Prior to the Closing, the Seller shall promptly notify the Buyer in writing of (a) all events, circumstances, facts and occurrences arising subsequent to the date of this Agreement which could result in any breach of a representation or warranty or covenant of the Seller in this Agreement or which could have the effect of making any representation or warranty of the Seller in this Agreement untrue or incorrect in any respect and (b) all other material developments affecting the assets, Liabilities, business, financial condition, operations, results of operations, customer or supplier relations, employee relations, projections or prospects of the Company, any Subsidiary or the Business.

[REDACTED]

ARTICLE 6. COVENANTS OF THE BUYER.

The Buyer hereby covenants as follows:

SECTION 6.1 Consents and Approvals. The Buyer shall, at its cost and expense, (a) use its reasonable best efforts to obtain all necessary consents, waivers, authorizations, orders and approvals of all Persons required in connection with the execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby and (b) diligently assist and cooperate with the Seller in preparing and filing all documents required to be submitted by the Seller to any Governmental Entities, in connection with such transactions and in obtaining any consents, waivers, authorizations, orders or approvals of Governmental Entities which may be required to be obtained by the Seller in connection with such transactions (which assistance and cooperation shall include, without limitation, timely furnishing to the Seller all information concerning the Buyer that counsel to the Seller reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, authorization or approval).

SECTION 6.2 Employees and Employee Benefits. The Buyer shall cause the Subject Companies to pay to any Employees who are terminated without cause within 12 months after the Closing severance benefits which shall be no less than the severance benefits provided by the Seller under the Subject Companies' applicable severance plan as of December 31, 2007, if any.

SECTION 6.3 Reasonable Best Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of the Buyer, the Buyer will use reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby.

SECTION 6.4 No Benefit to Third-Party. Nothing in this Agreement, express or implied, is intended to confer upon any current or former employee, director or consultant any rights, remedies or obligations under or by reason of this Agreement, including, without limitation, this Article 6

SECTION 6.5 Equipment Storage Agreement and Equipment Operating Agreement. At such time as the Buyer shall have the power and authority to do so, the Buyer shall, and shall cause the Subject Companies to, ratify and confirm the Equipment Storage Agreement and the Equipment Operating Agreement in effect as of the date hereof in order to effect the transactions contemplated thereunder.

ARTICLE 7. INDEMNIFICATION.

SECTION 7.1 Survival. The representations and warranties made by the Seller and the Buyer in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing and the consummation of the transactions contemplated by this Agreement.

[REDACTED]

SECTION 7.2 Indemnification by the Seller.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

any Losses arising out of or resulting from, or shall pay or become obliged to pay any sum on account of, one or more of the following:

(a) any untruth or inaccuracy in any representation or certification of the Buyer or the breach of any warranty of the Buyer contained in this Agreement or in any certificate delivered to the Seller in connection with the Closing;

(b) any failure of the Buyer duly to perform or observe any term, provision, covenant, agreement or condition contained in this Agreement on the part of the Buyer to be performed or observed;

(c) any and all Post-Closing Litigation (for the avoidance of doubt, other than Tax Claims),

[REDACTED]

[REDACTED]

SECTION 7.4 Procedures Relating to Third-Party Claims (other than Tax Claims). (a) In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim made by any Person (other than a party hereto) against the Indemnified Party (a "Third-Party Claim") (other than a Tax Claim, the procedures for which shall be governed by Section 11.3), such Indemnified Party must notify the Indemnifying Party in writing, and in reasonable detail, of the Third-Party Claim within ten (10) Business Days after receipt by such Indemnified Party of written notice of the Third-Party Claim, provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure (except that the Indemnifying Party shall not be liable for any expenses incurred during the period in which the Indemnified Party unreasonably failed to give such notice) Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all material and non-privileged notices and documents (including court papers) received by the Indemnified Party relating to the Third-Party Claim.

(b) If a Third-Party Claim is made against an Indemnified Party, the Indemnifying Party will be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party, which counsel will be satisfactory to the Indemnified Party. If the Indemnifying Party elects to assume the defense of a Third-Party Claim, the Indemnifying Party will not be liable to the Indemnified Party for

any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof (other than during any period in which the Indemnified Party shall have failed to give notice of the Third-Party Claim as provided above). If the Indemnifying Party chooses to defend or prosecute a Third-Party Claim, all the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Third-Party Claim, and making employees available to provide additional information and explanation of any material provided hereunder. If the Indemnifying Party chooses to defend or prosecute any Third-Party Claim, the Indemnified Party will agree to any settlement, compromise or discharge of such Third-Party Claim which the Indemnifying Party may recommend and which by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third-Party Claim relating to matters for which the Indemnified Party is entitled to indemnification hereunder and involves no admission in respect of or action on the part of the Indemnified Party. Whether or not the Indemnifying Party shall have assumed the defense of a Third-Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent.

SECTION 7.5 Distributions from Escrow Fund. (a) In the event that (a) the Seller shall not have objected to the amount claimed by the Buyer for indemnification with respect to any Loss within twenty (20) Business Days of notice thereof in accordance with the procedures set forth in the Escrow Agreement or (b) the Seller shall have delivered notice of its disagreement as to the amount of any indemnification requested by the Buyer within twenty (20) Business Days of notice thereof and either (i) the Seller and the Buyer shall have, subsequent to the giving of such notice, mutually agreed that the Seller is obligated to indemnify the Buyer for a specified amount and shall have so jointly notified the Escrow Agent or (ii) a final nonappealable judgment shall have been rendered by the court having jurisdiction over the matters relating to such claim by the Buyer for indemnification from the Seller and the Escrow Agent shall have received, in the case of clause (i) above, written instructions from the Seller and the Buyer or, in the case of clause (ii) above, a copy of the final nonappealable judgment of the court, the Escrow Agent shall deliver to the Buyer from the Escrow Fund any amount determined to be owed to the Purchaser under this Article 7 in accordance with the Escrow Agreement.

(b) Notwithstanding the foregoing, if there has been a Tax Claim that the Seller is liable for, in whole or in part, under this Agreement, and either (i) to the extent applicable, the Seller shall have failed to take all actions set forth in Section 11.3(b) to enable the Seller to assume and control the defense of any proceeding in respect of the Tax Claim, or (B) any amount is required to be paid to the applicable Tax authority prior to contesting such Tax Claim, an amount equal to the portion of the Tax Claim that the Seller is liable for under this Agreement shall be immediately distributed by the Escrow Agent to the Buyer from the Escrow Fund for payment to the applicable Tax authority, provided, that upon a final determination with

respect to the Tax Claim, any amounts previously released from the Escrow Fund in respect of such Tax Claim that exceed the finally determined amount shall be returned to the Escrow Fund or, if expired, to the Seller.



SECTION 7.6 **Exclusive Remedy.** Each of the Seller and the Buyer and their respective affiliates hereby acknowledges and agrees that its sole and exclusive remedy with respect to any claim for indemnification pursuant to or in connection with this Agreement shall be pursuant to the indemnification provisions set forth in this Article 7. Notwithstanding the foregoing, nothing herein will limit any claim based on fraud.

ARTICLE 8. CONDITIONS PRECEDENT TO PERFORMANCE BY THE SELLER

The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than Section 8.3) may be waived (in writing) in whole or in part by the Seller in its sole discretion at or prior to the Closing Date:

SECTION 8.1 **Representations and Warranties of the Buyer.** All representations and warranties made by the Buyer in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Buyer on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for such representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date and the Seller shall have received a certificate to that effect from the Buyer dated the Closing Date and signed by an authorized officer of the Buyer

SECTION 8.2 **Performance of the Obligations of the Buyer.** The Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and the Seller shall have received a certificate to that effect from the Buyer dated the Closing Date and signed by an authorized officer of the Buyer.

SECTION 8.3 No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity that declares this Agreement invalid or unenforceable in any respect or which prevents the consummation of the transactions contemplated hereby shall be in effect; and no action or proceeding before any Governmental Entity shall have been instituted or threatened by any Governmental Entity, or by any other Person, which seeks to prevent or delay the consummation of the transactions contemplated by this Agreement or which challenges the validity or enforceability of this Agreement and which in any such case has a reasonable likelihood of success in the reasonable opinion of counsel to the Seller

SECTION 8.4 Closing Deliveries by the Buyer. (a) At the Closing, the Buyer shall deliver to the Seller:

- (i) the Closing Payment Amount by wire transfer in immediately available funds; and
 - (ii) a certificate of a duly authorized officer of the Buyer certifying as to the matters set forth in Sections 8.1 and 8.2.
- (b) At the Closing, the Buyer shall deliver to the Escrow Agent, in accordance with the Escrow Agreement, the Escrow Amount by wire transfer in immediately available funds to the accounts designated therefor in the Escrow Agreement.

ARTICLE 9. CONDITIONS PRECEDENT TO PERFORMANCE BY THE BUYER.

The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which may be waived (in writing) in whole or in part by the Buyer in their sole discretion at or prior to the Closing Date:

SECTION 9.1 Representations and Warranties of the Seller All representations and warranties made by the Seller in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by the Seller that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Seller on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by the Seller that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date, and the Buyer shall have received a certificate to that effect from the Seller dated the Closing Date and signed by an authorized officer of the Seller

SECTION 9.2 Performance of the Obligations of the Seller. The Seller shall have performed in all material respects all obligations required under this Agreement to be performed by them on or before the Closing Date and the Buyer shall have received a certificate

to that effect from the Seller dated the Closing Date and signed by an authorized officer of the Seller.

SECTION 9.3 **No Violation of Orders.** No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity, which declares this Agreement invalid or unenforceable in any respect or prevents the consummation of the transactions contemplated hereby shall be in effect; and no action or proceeding before any Governmental Entity shall have been instituted or threatened by any Governmental Entity or by any other Person which seeks to prevent or delay the consummation of the transactions contemplated by this Agreement or which challenges the validity or enforceability of this Agreement, and which in either such case has a reasonable likelihood of success in the reasonable opinion of counsel to the Buyer.

SECTION 9.4 **STB.** Exemption or approval for the transactions contemplated by this Agreement shall have been obtained from the STB and such exemption or approval shall be in full force and effect.

SECTION 9.5 **Material Consents.** The Seller shall have received, each in form and substance satisfactory to the Buyer, the third-party consents and estoppel certificates necessary or desirable for the consummation of the transactions contemplated by this Agreement as set forth in Section 9.5 of the Disclosure Schedule:

SECTION 9.6 **FIRPTA.** The Seller shall deliver to the Buyer at the Closing a duly executed certificate, in form and substance acceptable to the Buyer and in accordance with applicable Treasury regulations, certifying the non-foreign status of the Seller for purposes of Section 1445 of the Code or such facts as to establish that transactions contemplated hereby are exempt from withholding pursuant to Section 1445 of the Code.

SECTION 9.7 **Release of Indemnity Obligations** On or prior to the Closing, the Seller, and any Affiliate of the Seller, shall have executed and delivered to the Subject Companies, for the benefit of each Subject Company, a general release and discharge, in form and substance satisfactory to the Buyer, releasing and discharging the Subject Companies from any and all obligations to indemnify the Seller, or any Affiliate of the Seller, or otherwise hold it harmless pursuant to any agreement or other arrangement entered into prior to the Closing.

SECTION 9.8 **Excluded Entities and Liabilities.** On or prior to the Closing, the Seller shall have carved out the Excluded Entities from Summit View and the Seller shall have paid and discharged the Excluded Liabilities as and when the same become due and payable.

SECTION 9.9 **No Material Adverse Effect.** No event or events shall have occurred, or be reasonably likely to occur, which, individually or in the aggregate, have, or could have, a Material Adverse Effect.

[REDACTED]

SECTION 9.11 Closing Deliveries by the Seller At the Closing, the Seller shall have delivered or caused to be delivered to the Buyer.

(a) stock certificates evidencing the shares of Summit View duly endorsed in blank, or accompanied by stock powers duly executed in blank, in a form satisfactory to the Buyer and with all required stock transfer tax stamps affixed;

(b) a receipt for the Closing Payment Amount;

(c) a true and complete copy, certified by the Secretary or an Assistant Secretary of Summit View, of the resolutions duly and validly adopted by the Board of Directors of Summit View evidencing its authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(d) a certificate of the Seller certifying as to the matters set forth in Sections 9.1 and 9.2,

(e) a duly executed certificate certifying the non-foreign status of the Seller as set forth in Section 9.6;

(f) a copy of (A) the Certificates of Incorporation (or similar organizational documents), as amended, of each Subject Company, certified by the Secretary of State of the jurisdiction in which each such entity is incorporated or organized, as of a date not earlier than five Business Days prior to the Closing and accompanied by a certificate of the Secretary or Assistant Secretary of each such entity, dated as of the Closing, stating that no amendments have been made to such Certificate of Incorporation (or similar organizational documents) since such date, and (B) the By-Laws (or similar organizational documents) of the Company and of each Subsidiary, certified by the Secretary or Assistant Secretary of each such entity,

(g) good standing certificates for the Company and for each Subsidiary from the Secretary of State of the jurisdiction in which each such entity is incorporated or organized and from the Secretary of State in each other jurisdiction in which the properties owned or leased by any of the Company or any Subsidiary, or the operation of its business in such jurisdiction, requires the Company or any Subsidiary to qualify to do business as a foreign corporation, in each case dated as of a date not earlier than five Business Days prior to the Closing; and

(h) the general release and discharge from the Seller referred to in Section 9.7 in form and substance satisfactory to the Buyer in its sole discretion

ARTICLE 10. TERMINATION

SECTION 10.1 Conditions of Termination Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by written notice at any time before the Closing:

- (a) by mutual consent of the Seller and the Buyer.
- (b) by the Buyer if any Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) days after written notice to the Seller (provided that the Buyer is not then in material breach of the terms of this Agreement; and provided, further, that no cure period shall be required for (1) a breach which by its nature cannot be cured or (2) a failure to make delivery of stock certificates evidencing the shares of Summit View in accordance with Section 9.11(a)) such that the conditions set forth in Section 9.1 or Section 9.2 hereof, as the case may be, will not be satisfied;
- (c) by the Seller if any Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) days after written notice to the Buyer (provided that the Seller is not then in material breach of the terms of this Agreement; and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured) such that the conditions set forth in Section 8.1 or Section 8.2 hereof, as the case may be, will not be satisfied,
- (d) by the Seller or the Buyer if there shall be a final, non-appealable order of a court of competent jurisdiction in the United States in effect preventing, restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated hereby;
- (e) by the Buyer if the consent of the STB shall not have been granted and all appeals of such determination shall have been taken and unsuccessful; or
- (f) by the Seller or the Buyer if the Closing shall not have been consummated within nine months after the date hereof; provided that the right to terminate this Agreement under this Section 10.1(f) shall not be available to any party if the failure of the Closing to have occurred was primarily due to the failure of such party to perform any of its obligations under this Agreement.

SECTION 10.2 Effect of Termination. Except as provided herein, in the event of the termination of this Agreement as provided in Section 10.1 hereof, this Agreement shall forthwith become void, and there shall be no liability or obligation on the part of the Seller or the Buyer, or their respective officers, directors, stockholders, members, partners or other Persons under their control. If this Agreement is terminated as provided herein, except as otherwise expressly set forth herein, no party to this Agreement shall have any liability hereunder to any other party, except for any breach by such party of the terms and provisions of this Agreement. The provisions of Sections 3.26, 4.5, 12.2, 12.3, 12.14 and 12.15 shall survive any termination hereof pursuant to Section 10.1

ARTICLE 11. TAX MATTERS.

The following provisions shall govern the allocation of responsibility between the Buyer and the Seller for certain tax matters following the Closing Date.

SECTION 11.1 Tax Returns. (a) To the extent not previously filed, the Buyer shall, at the Seller's cost and expense, prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Subject Companies for Pre-Closing Tax Periods, including any Tax Return that includes an Excluded Entity and at least one Subject Company. The Buyer shall deliver to the Seller a copy of any such Tax Return 20 days prior to the due date (including extensions) for the filing of such Tax Return and shall reflect any reasonable comments provided by the Seller in writing within 10 days of the Seller's receipt of such Tax Return. The Seller shall pay the Buyer an amount equal to the Taxes shown to be due and payable on any such Tax Return (for the avoidance of doubt, including Taxes of an Excluded Entity or attributable to an Excluded Asset or Excluded Liability) no later than 3 days prior to the due date (including extensions) for the filing of such Tax Return.

(b) The Buyer shall prepare or cause to be prepared and file or cause to be filed any Tax Returns of the Subject Companies for taxable periods that begin on or before the Closing Date and end after the Closing Date, including any Tax Return that includes an Excluded Entity and at least one Subject Company. The Buyer shall deliver to the Seller a copy of any such Tax Return, together with a statement setting forth the amount of Taxes allocable to the Pre-Closing Tax Period (pursuant to Section 7 2(c) or with respect to an Excluded Entity, Excluded Asset or Excluded Liability), 20 days prior to the due date (including extensions) for the filing of such Tax Return and shall reflect any reasonable comments provided by the Seller in writing within 10 days of the Seller's receipt of such Tax Return. The Seller shall pay to the Buyer an amount equal to the Taxes shown as due and payable on any such Tax Return that are allocable to the Pre-Closing Tax Period, including with respect to an Excluded Entity, Excluded Asset or Excluded Liability no later than 3 days prior to the due date (including extensions) for the filing such Tax Return (including extensions)

(c) The Seller shall be responsible for the timely preparation and filing of any Tax Returns of the Excluded Entities that do not include a Subject Company and shall timely pay all Taxes shown to be due and payable on such Tax Returns

SECTION 11.2 Tax Cooperation. The Buyer and the Seller shall reasonably cooperate, and shall cause their respective Affiliates (including the Subject Companies and the Excluded Entities), officers, employees, agents, auditors and representatives to reasonably cooperate (including by maintaining in accordance with the applicable record retention policies of the Buyer or Seller, as applicable, and making available to each other all relevant records), in preparing and filing all Tax Returns and in resolving all disputes and audits with respect to Taxes of the Subject Companies for any Pre-Closing Tax Period.

SECTION 11.3 Procedures Relating to Indemnification of Tax Claims.

(a) If a claim shall be made by any Tax authority which, if successful, might result in an indemnity payment to any Indemnified Party pursuant to Section 7.2 hereof, the

Indemnified Party shall notify the Indemnifying Party promptly of such claim (a "Tax Claim"), provided, however, the failure to give notice shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party has been materially prejudiced as a result of such failure.

(b) With respect to any Tax Claim relating to a Pre-Closing Tax Period or an Excluded Entity, the Seller shall have the right, at its own expense, to control all proceedings and may make all decisions taken in connection with such Tax Claim, provided that the Seller shall not settle such Tax Claim without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, and Buyer shall have the right to participate fully in all aspects of the prosecution or defense of such Tax Claim if they reasonably determine that such Tax Claim could have a material adverse impact on the Taxes of the Subject Companies in a taxable period or portion thereof beginning after the Closing Date; provided, further, that the Seller acknowledges in writing its liability under this Agreement to hold Buyer and its Affiliates (including the Subject Companies) harmless against the full amount of any adjustment which may result from the Tax Claim. Notwithstanding the foregoing, in the case of a Tax Claim in respect of Taxes for which both the Seller and the Buyer (or its Affiliates including the Subject Companies) could be liable, (i) each of the Seller and the Buyer may participate in any proceeding relating to the Tax Claim and (ii) the proceeding shall be controlled by that party which would bear the burden of the greater portion of the sum of the adjustment and any corresponding adjustments that may reasonably be anticipated for future periods; provided that the controlling party shall not settle or compromise such audit or proceeding without the prior written consent of the non-controlling party (such consent not to be unreasonably withheld or delayed).

SECTION 11.4 Transfer Taxes All transfer, documentary, sales, use, registration and similar Taxes (including all applicable real estate transfer Taxes and stock transfer Taxes) and related fees (including any penalties, interest and additions to Tax) incurred in connection with the transactions contemplated hereby (including the transfer of an Excluded Entity or an Excluded Asset to another Subject Company or the Seller) shall be borne by the Seller, and the Seller and the Buyer shall cooperate in a timely manner in preparing and filing all Tax Returns as may be required to comply with the provisions of such Tax Laws.

SECTION 11.5 Tax Treatment. Any indemnification payments made pursuant to this Agreement shall be treated by the parties, to the extent permitted by applicable Law, as a Purchase Price adjustment, unless determined otherwise in a final determination as defined in Section 1313 of the Code.

[REDACTED]

ARTICLE 12. MISCELLANEOUS.

SECTION 12.1 Successors and Assigns. Except as otherwise provided in this Agreement, no party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that the Buyer may assign any or all of its rights and obligations hereunder to any wholly owned direct or indirect affiliate of Buyer or to an independent irrevocable voting trust pursuant to 49 C.F.R. Part 1013; provided, further, however, that no such assignment shall reduce or otherwise vitiate any of the obligations of the Buyer hereunder. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto and no assignment shall relieve any party of any obligation or liability under this Agreement.

SECTION 12.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware. Each party hereto agrees to commence any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby in any federal court sitting in the City of Wilmington, Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in any Delaware state court. Each party hereto irrevocably submits to the jurisdiction of such court for the purposes of any such suit, action or other proceeding. If the matter of such suit, action or proceeding falls within the jurisdiction of the Delaware Court of Chancery, then the parties agree and prefer that such suit, action or proceeding related to such matter shall be submitted exclusively to the Delaware Court of Chancery. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 12.2. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in any federal court in the City of Wilmington, Delaware, or any Delaware State court and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum

SECTION 12.3 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND COVENANTS THAT IT WILL NOT ASSERT ANY RIGHT TO TRIAL BY JURY IN ANY FORM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION, OR SUIT ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY ACKNOWLEDGES THIS

SECTION CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT RELIES IN ENTERING THIS AGREEMENT

SECTION 12.4 **Expenses.** The Seller shall pay any legal, accounting and other fees, expenses and costs incurred by the Subject Companies prior to the Closing Date in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The Buyer shall pay any legal, accounting and other fees, expenses and costs incurred by the Buyer prior to the Closing Date in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Except as otherwise provided in this Agreement, all of the other fees, expenses and costs incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall be paid by the party hereto incurring such fees, expenses and costs.

SECTION 12.5 **Severability.** In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

SECTION 12.6 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given, (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and telephonic confirmation of receipt is obtained promptly after completion of transmission; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to the Seller:

Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-3413
Attn. Roderick H. Willcox
Telecopy. 614-221-4012

If to the Buyer.

c/o Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, Connecticut 06830
Attn. Allison M. Fergus
Telecopy: (203) 661-4106

Copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attn: Creighton O'M. Condon
Telecopy: (212) 848-7179

If to Summit View prior to the Closing, to the Seller.

If to Summit View after the Closing, to the Buyer.

Copy to.

Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-3413
Attn: Roderick H. Willcox
Telecopy: 614-221-4012

Copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attn: Creighton O'M Condon
Telecopy: (212) 848-7628

Any party may change its address for the purpose of this Section by giving the other party written notice of its new address in the manner set forth above.

SECTION 12.7 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

SECTION 12.8 Public Announcements. The parties agree that after the signing of this Agreement and prior to the Closing Date, the Seller shall not, and shall not permit the Subject Companies to, and the Buyer shall not, make any press release or public announcement concerning this transaction without the prior approval of the other party or parties hereto unless a press release or public announcement is required by Law or the rules of any securities exchange on which such party's securities are listed. Before a party to this Agreement makes any such announcement or other disclosure, it agrees to give the other parties hereto prior notice and an opportunity to comment on the proposed disclosure.

SECTION 12.9 Entire Agreement. This Agreement (including the Schedules attached hereto) contains the entire agreement and understanding among the parties hereto with respect to the transactions contemplated hereby and supersedes and replaces all prior agreements and understandings, oral or written, including the Original Stock Purchase Agreement, with regard to such transactions. All Schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein

SECTION 12.10 Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Person to the Seller or the Buyer. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Seller or the Buyer

SECTION 12.11 Scheduled Disclosures. Disclosure of any matter, fact or circumstance in a schedule to this Agreement shall be specific as to the Section and Subsection of this Agreement to which such disclosure applies and shall not be deemed to be disclosure

thereof for purposes of any other Section, Subsection or Schedule hereto unless the relevance of such disclosure to such other Section, Subsection or Schedule is readily apparent.

SECTION 12.12 Section and Paragraph Headings; Neutral Construction

(a) The Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement

(b) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement

SECTION 12.13 Knowledge. References in this Agreement to the knowledge of the Seller shall refer to the knowledge, [REDACTED]

SECTION 12.14 Confidentiality. [REDACTED]

SECTION 12.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

JERRY JOE JACOBSON

/s/ Jerry Joe Jacobson

SUMMIT VIEW, INC.

By: /s/ Jerry Joe Jacobson

Name: Jerry Joe Jacobson

Title: President

GENESEE & WYOMING INC.

By: /s/ Mark W. Hastings

Name: Mark W Hastings

Title: Executive Vice President,
Corporate Development

EXHIBIT 4

VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT (the "Voting Trust" or "Agreement") is made and entered into this 1st day of October, 2008, by and between Genesee & Wyoming Inc., a Delaware Corporation ("Settlor") and Norman Carlson (the "Trustee"), whose address is 1351 Whitmore Court, Lake Forest, IL, 60045. This Voting Trust is being entered into pursuant to the Guidelines for the Proper Use of Voting Trusts as set forth in 49 CFR Part 1013.

W I T N E S S E T H:

WHEREAS, Settlor is a railroad holding company that directly or indirectly controls the following freight rail common carriers: Buffalo & Pittsburgh Railroad, Inc. ("BPRR"), a Class II rail carrier operating in New York and Pennsylvania, and the following Class III rail carriers: Arkansas, Louisiana & Mississippi Railroad Company, operating in Arkansas and Louisiana; Chattahoochee Bay Railroad, Inc., operating in Georgia and Alabama; Chattahoochee Industrial Railroad, operating in Georgia; The Chattooga and Chickamauga Railway Company, operating in Tennessee and Georgia; Columbus and Greenville Railway Company, operating in Mississippi; Commonwealth Railway, Inc., operating in Virginia; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; First Coast Railroad, Inc., operating in Florida and Georgia; Fordyce & Princeton Railroad Company, operating in Arkansas; Genesee and Wyoming Railroad Company, operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois, Louisiana & Delta Railroad, Inc., operating in Louisiana; Luxapalila Valley Railroad, Inc., operating in Mississippi and Alabama; Maryland Midland Railway, Inc., operating in Maryland, Portland & Western Railroad, Inc., operating in Oregon;

Rochester & Southern Railroad, Inc., operating in New York; Salt Lake City Southern Railroad Company, operating in Utah; Savannah Port Terminal Railroad Inc., operating in Georgia; South Buffalo Railway Company, operating in New York, St Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., operating in Vermont; Talleyrand Terminal Railroad Company, Inc., operating in Florida; Tazewell & Peoria Railroad, Inc., operating in Illinois; Utah Railway Company, operating in Colorado and Utah; Willamette and Pacific Railroad, Inc., operating in Oregon; and York Railway Company ("York"),¹ operating in Pennsylvania;

WHEREAS, Settlor also controls additional rail carriers together with two of its wholly-owned subsidiaries that are non-carrier holding companies, RP Acquisition Company One ("RP1") and RP Acquisition Company Two ("RP2") Settlor and RP1 together control Rail Partners, L.P.² and eight Class III rail carriers formed as limited partnerships³ Settlor and RP2 together control Rail Partners, L.P.,⁴ KWT Railway, Inc., a Class III rail carrier corporation, and five Class III rail carriers organized as limited liability companies,⁵

¹ Settlor also has control over Maryland and Pennsylvania, LLC and Yorkrail, LLC, two non-operating Class III rail carriers that separately hold the rail assets over which York operates.

² Rail Partners, L.P. is a non-carrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the limited partnership Class III rail carriers described in footnotes 4 and 6 below. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

³ The limited partnership Class III rail carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership, Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership.

⁴ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁵ The Class III rail carriers organized as limited liability companies are: AN Railway, L.L.C.; The Bay Line Railroad, L.L.C.; Meridian & Bigbee Railroad, L.L.C., Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

WHEREAS, Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc., and The Columbus & Ohio River Rail Road Company (collectively, the "Southern Division Railroads") operate as a single system by virtue of the fact that the three railroads share management; the three railroads are treated as one division by the current owner; the three railroads are run from one local office and headquarters which makes all significant management, budgeting, capital expenditure, operating, and design decisions, and which manages all maintenance of way/signal activities; the three railroads interconnect and do not compete with each other; the employees are employed of a single entity, Ohio Central; the locomotives of all three railroads are owned by one company and operated with a common paint scheme; the three railroads share car department employees; the marketing efforts of the three railroads are coordinated and directed from the local headquarters; the three railroads rely on each other, or their common parent, for financing, equipment purchases, and cross-collateralization; and the customers of the three railroads call a central location for service;

WHEREAS, Settlor will file with the Board a petition for exemption pursuant to 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 11323 to control the Southern Division Railroads and seven other Ohio Central Railroads,

WHEREAS, Settlor desires to isolate the control of the Southern Division Railroads from the Settlor and any company controlled by or affiliated with Settlor;

WHEREAS, by virtue of the fact that the three Southern Division Railroads are operated as a single system the common stock in each of the railroads may be given to a common trustee to exert control over all three of the railroads;

WHEREAS, upon closing of the Transaction all of the shares of each of the Southern Division Railroads will be deposited into an independent irrevocable voting trust pursuant to the

Board's regulations at 49 C.F.R. Part 1013, in order to avoid any allegation or assertion that Settlor is controlling or has the power to control the Southern Division Railroads prior to receipt of the Board's approval or exemption of the Settlor's control of the Southern Division Railroads;

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Voting Trust.

NOW THEREFORE, in consideration of the premises and mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Settlor hereby irrevocably appoints Norman Carlson as Trustee hereunder, and Norman Carlson hereby accepts said appointment and agrees to act as Trustee under this Voting Trust as provided herein.
2. This Voting Trust shall be irrevocable by Settlor and shall terminate only in accordance with the provisions of this Agreement.
3. Settlor agrees that upon execution of this Agreement by both parties it will assign, transfer and deliver all of its right, title and interest in the issued and outstanding shares of capital stock of the Southern Division Railroads to the Trustee, and will direct that any and all additional shares of the Southern Division Railroads hereafter acquired by Settlor during the term of this Voting Trust be likewise assigned, transferred and delivered to the Trustee. All such shares shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee, with all applicable transfer taxes and fees having been paid by Settlor, in exchange for Trust Certificates (as described in Paragraph 4 hereof). The delivery of certificates of such shares may be made at such other place as may be designated by the Trustee. All shares of the Southern Division

Railroads at any time deposited with the Trustee hereunder are hereinafter referred to as the "Trust Stock."

4. The Trustee shall hold in trust and shall dispose of, pursuant to the terms and conditions of this Voting Trust, all Trust Stock which may now or afterwards from time to time be delivered by or for the account of the Settlor. In exchange for the Trust Stock, the Trustee shall cause to be issued and delivered to the Settlor voting trust certificates ("Trust Certificates") substantially in the form attached hereto as Exhibit A, with the blanks therein appropriately filled.
5. The Trust Certificates issued by the Trustee may be transferred on the books of the Trustee by the registered holder or holders of the Trust Certificates (each, a "Holder," together, the "Holders") upon the surrender thereof, properly endorsed by the Holder, in person or by an authorized attorney of the Holder, according to rules from time to time established for that purpose by the Trustee. Title to the Trust Certificates, when endorsed, shall, to the extent permitted by law, be transferable with the same effect as in the case of negotiable instruments. Delivery of the Trust Certificates, endorsed in blank by a Holder, shall vest title to and all rights under the Trust Certificates in the transferee thereof to the same extent and for all purposes as would delivery under like circumstances of negotiable instruments payable to bearer; *provided*, however, that the Trustee may treat the Holder of record, or, when presented endorsed in blank, the bearers, as the owners for all purposes whatsoever, and shall not be affected by any notice to the contrary, provided further, however, that the Trustee shall not be required to deliver any Trust Stock without the surrender and cancellation of the corresponding Trust Certificate(s). Except to the extent provided otherwise in Paragraph 12 hereof, every

transferee of a Trustee Certificate shall, upon the receipt of such properly endorsed Trust Certificate, become a party to this Voting Trust as though an original party, and shall assume all attendant rights and obligations under this Voting Trust. In connection with, and as a condition of making or permitting any transfer or delivery of any Trust Stock or Trust Certificate under any provision of this Voting Trust, the Trustee may require the payment of a sum sufficient to pay or reimburse the Trustee for any stamp tax or other governmental charge in connection with the transaction.

6. From the date first written above, and until such time as this Voting Trust shall terminate in accordance with the provisions in the Agreement, the Trustee, subject to the limitations contained in the Agreement, shall have the full right to vote and to execute consents with respect to the Trust Stock, and shall be duly bound to exercise such voting rights, either in person or by proxy, at all meetings of the shareholders of the Southern Division Railroads for any purpose, and shall possess in respect of any and all the Trust Stock, and shall be entitled to exercise, all the powers of absolute owners of the Trust Stock and all rights of every nature, in respect of such Trust Stock, including the right to vote and to execute consents for every purpose and to receive distributions thereon, unless otherwise directed by a court of competent jurisdiction. The Trustee shall not exercise the voting powers of the Trust in any way so as to cause any dependence or intercorporate relationship between Settlor or companies controlled by or affiliated with Settlor (not including the Southern Division Railroads), on the one hand, and the Southern Division Railroads or companies controlled by or affiliated with the Southern Division Railroads, on the other hand, other than such dealings as permitted pursuant to Paragraph 7 hereof. (The term "affiliate" or "affiliates" wherever used in this Voting Trust shall have the

meaning specified in 49 U.S.C. § 11323(c)). The Trustee may not vote the Trust Stock for any transaction that would result in a violation of 49 U.S.C. § 11323; provided, however, that the Trustee may, with the consent of the Holder(s) representing at least two-thirds of the shares of the Southern Division Railroads at the time held pursuant to this Voting Trust, vote with respect to the following:

- (a) the sale, lease or exchange of all or substantially all of the property and assets of the Southern Division Railroads to any company other than a company controlled by or affiliated with Settlor, or dissolution of the Southern Division Railroads,
- (b) the consolidation or merger of the Southern Division Railroads with or into any company other than a company controlled by or affiliated with Settlor.

In the case of any such sale, lease, exchange, consolidation, merger or dissolution so made with the consent of the Holder(s) representing at least two-thirds of the shares of the Southern Division Railroads at the time held in trust, the Trustee shall have the power to sell, exchange, surrender or otherwise dispose of all or any part of the ownership interest of the Southern Division Railroads at the time held in trust, pursuant to the terms of or in order to carry into effect such sale, lease, exchange, consolidation, merger or dissolution. Subject to the provisions, and until termination, of this Voting Trust, the Trustee may vote or consent, or issue proxies to vote or consent at shareholders' meetings of the Southern Division Railroads and otherwise, as the Trustee shall determine in his uncontrolled discretion, and no voting or other right or power with respect to the Trust Stock and other securities held in trust shall pass to any Holder or to others by or under the Trust Certificates, or by or under this Voting Trust, or by or under any other agreement.

7. Neither the Trustee, nor the director, officer, or shareholder of any company controlled by or affiliated with the Trustee, may serve as an officer or member of the board of directors of Settlor or any company controlled by or affiliated with Settlor, or have any direct or indirect business arrangements or dealings, financial or otherwise, with Settlor or any company controlled by or affiliated with Settlor (other than this Voting Trust), that could be construed as creating an indicium of control by Settlor over the Trustee. The investment by the Trustee in voting securities of Settlor or its affiliates not in excess of five percent of their outstanding voting securities shall not be considered a proscribed business arrangement or dealing, *provided* that such investment does not permit Trustee to control or direct the affairs of Settlor or its affiliates. The Trustee has the responsibility to manage the Southern Division Railroads through casting his votes for the Southern Division Railroads' Board of Directors and to exercise the voting rights and execute consents as provided in Paragraph 6 hereof. The Trustee's duties are therefore not merely custodial in nature. Nothing in this Voting Trust shall restrict the ability of any company controlled by or affiliated with Settlor to enter into or continue commercial dealings with the Southern Division Railroads in the ordinary course of business, based on arm's-length bargaining, during the term of this Voting Trust, including without limitation the following:

- (a) The provision of rail service over the Southern Division Railroads' rail lines by any company controlled by or affiliated with the Settlor;
- (b) The leasing by the Southern Division Railroads of rolling stock or other equipment or assets or services from any company controlled by or affiliated with Settlor, and
- (c) The provision by the Southern Division Railroads of such documents and information as Settlor may reasonably request in connection with presenting its

position regarding control of the Southern Division Railroads to the Board or a court of competent jurisdiction.

8. In voting or giving directions for voting the Trust Stock, the Trustee will exercise his best judgment to elect suitable directors in the best interest of the affairs of the Southern Division Railroads. The Trustee, however, assumes no responsibility with respect to acts or omissions of the directors of the Southern Division Railroads (other than the gross negligence or willful misconduct of the Trustee himself).
9. The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by Trustee under the terms of this Agreement and shall be entitled to indemnity from Settlor against any and all expenses, claims and liabilities incurred in connection with or with respect to the performance of Trustee's duties under this Voting Trust; provided, that the indemnification of the Trustee by the Settlor shall not extend to expenses, claims or liabilities resulting from or in connection with the willful misconduct or gross negligence of the Trustee. The Trustee shall submit to Settlor quarterly invoices for services with appropriate documentation, and Settlor shall pay such statements within thirty (30) days after receipt thereof.
10. From and after the deposit of the Trust Stock with Trustee, and until the termination of this Voting Trust pursuant to the terms hereof, a Holder shall be entitled to receive, from time to time, payment of any cash distributions collected by the Trustee upon the ownership interests in the Southern Division Railroads represented by the Trust Certificates. Immediately following receipt of any such cash distribution, the Trustee shall pay the same over to or as directed by the transferee or Holder thereunder as then known to the Trustee.

11. In the event that any distribution other than cash is received by the Trustee, such distribution shall be held by the Trustee in accordance with the terms of this Voting Trust as though it is Trust Stock that was initially deposited with the Trustee by Settlor under this Voting Trust. With respect to such distribution, the Trustee shall issue new or additional Trust Certificates, or any applicable equivalent thereto, to the Holders entitled to receive any such distribution.
12. (a) This Voting Trust is accepted by Trustee subject to the rights hereby reserved to the Holder(s) at any time to sell or make any other disposition, in whole or in part, of its Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee will at any time upon receipt of written instructions from a Holder, designating the person or entity to whom the Holder has sold or otherwise disposed of the whole or any part of such Holder's Trust Stock, and certifying in writing that such person or entity is not a shareholder, officer or director of Settlor, or a company controlled by or affiliated with Settlor, or a shareholder, officer or director of a company controlled by or affiliated with Settlor (upon which written certification the Trustee shall be entitled to rely), immediately transfer to such person or entity therein named all of the Trustee's right, title and interest in such amount of the Trust Stock as may be set forth in such instructions and shall cooperate with such person or entity in having such Trust Stock reissued in the name of such person or entity. If such instructions result in the transfer of all of the Trust Stock subject to this Voting Trust as of the date of such instructions, then upon transfer of the Trustee's right, title and interest therein, and in the event of a sale thereof, upon delivery of the proceeds of

such sale, this Voting Trust shall cease and come to an end. If such instructions relate to only a part of the Trust Stock, then this Voting Trust shall cease as to such part upon such transfer, and the receipt of proceeds in the event of sale, but shall remain in full force and effect as to the remainder of the Trust Stock. In the event of a sale of Trust Stock by a Holder, the net proceeds of such sale shall be made payable to the Trustee and upon receipt thereof the Trustee shall promptly pay or cause to be paid such net proceeds to that Holder. It is the intention of this subparagraph that no violations of 49 U.S.C. § 11323 will result from a termination of this Voting Trust.

- (b) In the event that (i) Title 49 of the United States Code or other controlling law is amended to allow Settlor to acquire control of the Southern Division Railroads without obtaining Board or other governmental approval or exemption, (ii) the Board by final order approves or exempts the control of the Southern Division Railroads by Settlor, or (iii) Settlor is entitled under the regulations of the Board to file a verified notice of exemption to control the Southern Division Railroads and that notice becomes effective without the need for a Voting Trust; then immediately upon the delivery of a copy of such order of the Board or exemption with respect thereto, or an opinion of independent counsel selected by the Trustee that no order of the Board or other governmental authority or exemption is required, the Trustee shall either vote the Trust Stock as directed in writing by the Holder(s), or transfer to the Holder(s) or transfer upon the order of the Holder(s) as then known to the Trustee, Trustee's right, title and interest in and to all of the Trust Stock or such part as may then be held by Trustee (as provided in

subparagraph (a) hereof), and upon such transfer this Voting Trust shall cease and come to an end.

- (c) In the event that (i) the Board or a court of competent jurisdiction denies Settlor authority to control the Southern Division Railroads and that order becomes final after judicial review or failure to appeal, (ii) the Board or a court of competent jurisdiction orders the Trustee to divest himself of the Trust Stock, and that order becomes final after judicial review or failure to appeal, or (iii) the Holder(s) determine in light of any other final order that the Trust Stock should be sold, the Trustee shall use best efforts to dispose of the Trust Stock under the terms of the Board or court order and in accordance with any instructions of Holder(s) not inconsistent with the requirement of the terms of any Board or court order. To the extent that registration is required under the Securities Act of 1933 or any other applicable securities laws in respect of any distribution of Trust Stock as contemplated in the Agreement, the Holder(s) shall reimburse the Trustee for any expenses incurred by Trustee. The proceeds of the sale shall be distributed, on a pro rata basis, to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require the surrender to Trustee of the Trust Certificates hereunder before paying to the Holder such Holder's share of the proceeds.
- (d) Unless sooner terminated pursuant to any other provision herein contained, this Voting Trust shall terminate one (1) year after the day and year first written above, so long as no violation of 49 U.S.C. § 11323 will result from such termination, and provided that this Voting Trust may be extended by mutual

agreement of the parties hereto pursuant to applicable state law, until such time as the ICC Termination Act of 1995 and the regulations promulgated thereunder by the Board as presently in effect shall no longer require that the Trust Stock be held in a voting trust. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require surrender to the Trustee of the Trust Certificates hereunder before the release or transfer of the Trust Stock evidenced thereby. Upon termination of this Voting Trust, the Holder(s)' respective rights, titles and interests in and to the Trust Stock then held by the Trustee shall be transferred to such Holder(s) in accordance with the terms and conditions of this Voting Trust and upon such transfer, this Voting Trust shall cease and come to an end.

(e) The Trustee shall promptly inform the Board of any transfer or disposition of the Trust Stock pursuant to this Paragraph 12.

13. The Trustee shall not, by reason of this Voting Trust, or by the exercise of any powers or duties pursuant to this Voting Trust, incur any responsibility as shareholder, manager, trustee or otherwise by reason of any error of judgment, or mistake of law or fact, or of any omission of any agent or attorney, or of any misconstruction of this Voting Trust, or for any action of any sort taken or omitted or believed by the Trustee to be in accordance with the terms of this Voting Trust or otherwise, except for the individual willful misconduct or gross negligence of the Trustee. The Trustee shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of the Trust Stock or of any endorsement thereof, or for any lack of endorsement thereof, or for any

description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or endorsement of the Trust Stock, except for the execution and delivery of this Voting Trust by the Trustee. Settlor agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost, or expense of any kind or character whatsoever in connection with this Voting Trust except those, if any, arising from or in connection with the gross negligence or willful misconduct of the Trustee, and, except for such costs and expenses arising from or in connection with the gross negligence or willful misconduct of the Trustee, (i) Settlor will at all times undertake, assume full responsibility for, and pay all costs and expenses of any suit or litigation of any character, with respect to the Trust Stock or this Voting Trust, and (ii) if the Trustee shall be made a party thereto, Settlor will pay all costs and expenses, including reasonable attorneys' fees, to which the Trustee may be subject by reason thereof. The Trustee may consult with counsel, and the opinion of such counsel shall constitute full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion. Notwithstanding any provision herein to the contrary, and without limiting the foregoing, Settlor shall indemnify and save harmless Trustee from and against any and all liability, losses and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with claims asserted against the Southern Division Railroads or Settlor, or related to the ownership or operation of the Southern Division Railroads' properties, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq*), the Hazardous Materials

Transportation Act (49 U.S.C. § 5105 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), and the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), each as may be amended from time to time, and analogous state or local laws (and regulations and orders issued thereunder); *provided*, that this indemnity shall not apply to the extent that such liability, loss or expense arises out of or in connection with the gross negligence or willful misconduct of the Trustee.

14. The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee. The Trustee may at any time remove any agent so appointed by the Trustee and appoint a new agent to carry out the purposes herein.
15. The Trustee may at any time resign by delivering to Settlor Trustee's resignation in writing, such resignation to take effect the earlier of thirty (30) days after the date that such notice is sent, or the date of the appointment of a successor trustee. The Trustee shall cease to act as Trustee hereunder effective upon the appointment of a successor trustee as hereinafter provided. Upon receiving notice of resignation, Settlor shall within fifteen (15) days appoint a successor trustee, who shall satisfy the requirements of Paragraph 7 hereof. If no successor trustee shall have been appointed and shall have accepted the appointment within twenty (20) days after such notice of resignation, the resigning Trustee may petition any federal court for the appointment of a successor trustee consistent with the terms and conditions of this Agreement. In the event of a Trustee's death or his inability to perform his duties under this Agreement, the Settlor shall, within fifteen (15) days after such death or inability to perform, appoint a successor

trustee who shall satisfy the requirements of Paragraph 7 hereof. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, Settlor shall be notified of such assumption, whereupon the Trustee shall be discharged of his powers and duties hereunder and the successor trustee shall become vested therewith. In the event of any material violation of the terms and conditions of this Voting Trust by the Trustee, the Trustee shall become disqualified from acting as Trustee hereunder as soon as a successor trustee hereunder shall have been selected in the manner provided by this paragraph.

16. Except as provided in this Agreement, the Trustee herein appointed, or any successor trustee, shall not, in the Trustee's individual capacity or otherwise, buy, sell or deal in the shares of the Southern Division Railroads, or the shares or membership or partnership interests, as applicable, of any company affiliated with or controlled by Settlor.
17. The Trustee accepts the powers and duties under this Voting Trust subject to all the terms, conditions and reservations contained in this Agreement and agrees to exercise the powers and perform the duties of Trustee as set forth in this Agreement; *provided*, however, that nothing contained herein shall be construed to prevent the Trustee from resigning as Trustee pursuant to paragraph 15 hereof.
18. All notices, demands, requests or other communications that may be or are required to be given, served or sent to the Trustee or Settlor pursuant to this Voting Trust shall be in writing and shall be deemed to have been properly given or sent by mailing by registered or certified mail, return receipt required, or by a national overnight delivery service, appropriately addressed to the Trustee or Settlor, as applicable, as follows:

If to the Trustee:

**Norman Carlson
1351 Whitmore Court
Lake Forest, IL 60045**

If to Settlor:

**Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830
Attn: Mark Hastings**

With copies to:

**David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Ave.
Washington, DC 20036**

Each notice, demand, request or communication which shall be mailed by registered or certified mail, or sent by national overnight delivery service, in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Upon Trustee's receipt of a notice to a Holder other than Settlor, or in the event the Trustee is required to send notice to a Holder other than Settlor, the Trustee shall forward or send such notice to the Holder of record at the last known address of such Holder listed on the books maintained by the Trustee.

19. Copies of this Voting Trust shall be on file in the office of the Trustee and shall be open to any officer of Settlor or any other Holder daily during normal business hours.
20. In order to permit Trustee to perform the duties and obligations of this Voting Trust, Settlor shall provide Trustee with all corporate records and Board orders concerning the

Trust Stock of the Southern Division Railroads promptly upon Settlor's receipt or creation of such documents.

- 21. If, at any time, the Trustee is of the opinion that any tax or governmental charge is payable in respect to any Trust Stock held by the Trustee or in respect of any distributions or other rights arising from the subject matter of this Voting Trust, the Trustee may, but shall not be required to, pay such tax or governmental charge. The Trustee shall have a first lien, in the sum of any amount so paid, along with interest at a rate of six percent (6%) per annum, against the Trust Stock held by the Trustee and/or against any distributions or other rights arising from the subject matter of this Voting Trust, and may be satisfied therefrom.**
- 22. If any term or provision of this Voting Trust is illegal, invalid or unenforceable under or inconsistent with present or future law, including, but not limited to, the ICC Termination Act of 1995 and regulations promulgated thereunder by the Board, as may be in effect at that time, then it is the intention of the parties hereto that the remainder of this Voting Trust shall not be affected thereby and shall be valid and shall be enforced to the fullest extent permitted by law. In the event that the Board shall at any time hereafter by final order find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall, upon receipt of such final order, act in accordance with such final order instead of the provisions of this Voting Trust.**
- 23. This Voting Trust may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.**
- 24. This Voting Trust shall be governed and construed in accordance with the laws of the State of Delaware**

25. This Voting Trust may from time to time be modified or amended by agreement executed by the Trustee and Settlor:

- (a) Pursuant to an order of the Board;
- (b) With prior approval of the Board; or
- (c) Upon receipt of an opinion of counsel satisfactory to Trustee and Settlor that an order of the Board approving such modification or amendment is not required and that such modification or amendment is consistent with the Board's regulations governing voting trusts as set forth in 49 CFR Part 1013 or any successor provision.

26. This Voting Trust shall be binding upon the successors and assigns of the parties hereto.

27. Once the Settlor has caused the Trust Stock of the Southern Division Railroads to be deposited with the Trustee, all references to "Settlor" in this Agreement shall be deemed to include any subsequent Holders.

IN WITNESS WHEREOF, the parties hereto have executed this Voting Trust as of the date first written above.

TRUSTEE:

Norman Carlson

SETTLOR:

GENESEE & WYOMING INC.

By: Mark W. Hastings

Its: Executive Vice President

EXHIBIT A
VOTING TRUST CERTIFICATE
FOR
OWNERSHIP INTEREST OF
OHIO CENTRAL RAILROAD, INC., OHIO SOUTHERN RAILROAD, INC., AND THE
COLUMBUS & OHIO RIVER RAIL ROAD COMPANY

THIS IS TO CERTIFY that Genesee & Wyoming Inc will be entitled, on the surrender of this Certificate, to receive on the termination of this Voting Trust Agreement ("Voting Trust") hereinafter referred to, or otherwise as provided in Paragraph 12 of the Voting Trust, all right, title and interest in a certificate or certificates for all of the shares of Common Stock of Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc., and The Columbus & Ohio River Rail Road Company (collectively, the "Southern Division Railroads"). This Certificate is issued pursuant to the Voting Trust, dated as of October 1, 2008, by and between Genesee & Wyoming Inc., a Delaware corporation ("Settlor"), and Norman Carlson ("Trustee"). A copy of this Voting Trust is on file in the office of the Trustee, and open to inspection by the holder hereof during normal business hours. This Voting Trust, unless earlier terminated or extended pursuant to the terms thereof, will terminate one year from the date on which it was made, as shown above, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of this Voting Trust, including the right to payments equal to the cash distributions, if any, paid by Southern Division Railroads on a pro rata basis with respect to the shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by such Trustee or successor, upon surrender hereof by the registered

holder in person or by an attorney duly authorized in accordance with the provisions of this Voting Trust, and until so transferred, the Trustee may treat the registered holder as the owner of this Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all provisions of, and becomes a party to, this Voting Trust.

IN WITNESS WHEREOF, the Trustee has signed this Certificate.

TRUSTEE

Signature: _____

Printed Name: _____

Dated. _____